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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 95

RAILROAD RETIREMENT BOARD, BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES, AND GEORGE M. HARRISON, PETITIONERS

vs.

DUQUESNE WAREHOUSE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 28, 1945

CERTIORARI GRANTED JUNE 11, 1945

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

Duquesne Warehouse Company,
Plaintiff-Appellee,

vs.

Railroad Retirement Board,
Defendant-Appellant,

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express & Station Employees, and George M. Harrison, President of said Brotherhood,
Intervening Defendants-Appellants

STATEMENT UNDER RULE 13, SUBDIVISION 4

This suit was begun in the District Court of the United States for the Southern District of New York by the filing of a complaint on May 18, 1943. The plaintiff was the Duquesne Warehouse Company, and the original defendant was the Railroad Retirement Board. On September 24, 1943, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express & Station Employees, and George M. Harrison, President of said Brotherhood, were granted leave to intervene as parties defendant.

The answer of the defendant Railroad Retirement Board was duly filed on July 21, 1943, and the answer of the intervening defendants was filed on September 24, 1943. On October 15, 1943, the plaintiff filed a notice of motion for summary judgment; on October 18, 1943, the defendant Railroad Retirement Board filed a notice of cross-motion for summary judgment; and on October 19, 1943, the intervening defendants duly served a notice of cross-motion for summary judgment, which has a filing date of July 6, 1944.

No property was attached, and there was no arrest. No trial was had, the motions of the plaintiff, the defendant Railroad Retirement Board, and the intervening defendants being heard before Honorable Henry W. Goddard, United States District Judge for the Southern District of New York, at a term of the District Court appointed for the hearing of motions, in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York, New York, on October 29, 1943. No question was referred to any commissioner, master, or referee. The decision and opinion of the Court were filed on February 29, 1944, and the final judgment was entered on March 20, 1944.

Appeal was taken by the filing of notices of appeal, by the defendant Railroad Retirement Board on June 14, 1944 and by the intervening defendants on June 20, 1944. The parties to the appeal are the Duquesne Warehouse Company, plaintiff-appellee, the Railroad Retirement Board, defendant-appellant, and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express & Station Employees, and George M. Harrison, President of said Brotherhood, intervening defendants-appellants.

IN UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

Duquesne Warehouse Company,
Plaintiff,
v.
Railroad Retirement Board,
Defendant.

SUMMONS

Issued May 18, 1943

To the above named Defendant:

You are hereby summoned and required to serve upon Burlingham, Veeder, Clark & Hupper, plaintiff's attorney, whose address 27 William St., New York, N. Y. an answer

to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

GEORGE J. H. FOLLMER
Clerk of Court.

Date: May 18th, 1943.

[Seal of Court]

IN UNITED STATES DISTRICT COURT

COMPLAINT

Filed May 18, 1943

Plaintiff complains of the defendant and alleges as follows:

First. This action arises under the Railroad Retirement Act of 1935, 49 Stat. 967, as amended by the Railroad Retirement Act of 1937, 50 Stat. 307, Part I, Section 1 thereof. It is also an action arising under a law regulating commerce, 28 U.S. Code, Section 41 (8). It is brought to compel the Railroad Retirement Board to set aside its action and decision taken and rendered on February 11, 1943, and hereinafter more particularly referred to, which action and decision plaintiff, a person aggrieved thereby, claims to be in violation of its legal rights.

Second. The plaintiff is a corporation organized under the laws of the Commonwealth of Pennsylvania and existing by virtue of the same, and since August 28, 1935 has been engaged as a public warehouseman in the business of commercial warehousing at Pittsburgh, Pa. For a limited period of time, between August 1937 and 15 May 1938, it conducted a similar busness at Erie, Pa., where it handled newsprint paper only.

Third. The defendant is an agency established by the Railroad Retirement Act of 1937 for the administration of the Railroad Retirement Acts of 1935 and 1937, and has its main office at No. 844 Rush Street, in Chicago, Illinois. The Board has established an office at No. 341 Ninth Avenue, in the Borough of Manhattan, City of New York, and within

the Southern District of New York. Under Section 9 (c) of the Railroad Retirement Act of 1935, the Board is a body corporate capable of being sued as such.

Fourth. Under date of May 23, 1939, the General Counsel of the Railroad Retirement Board in a letter to Mr. E. W. Smith, President of the plaintiff, issued an opinion that the plaintiff is an "employer" within the meaning of Section 1 (a) of the Railroad Retirement Act. A copy of that letter opinion is attached hereto and made a part hereof and marked Exhibit 1. Subsequently, and on September 15, 1939, at Washington, D. C., counsel for the plaintiff appeared before two members of the Board—the General Counsel of the Board being present also—and protested against that opinion and submitted a statement of facts and memorandum of law which the Board accepted. Copy of that statement of facts (the memorandum of law being omitted) is hereto annexed and made a part hereof and marked Exhibit 2. At the same time counsel for the plaintiff filed with the Board an executed substitute questionnaire of the Board on Form IQ-2-C, together with a letter of the same date. A copy of that questionnaire is hereto annexed and made a part hereof and marked Exhibit 3. A copy of that letter is hereto annexed and made a part hereof and marked Exhibit 4. For information purposes, copy of the executed questionnaire which was superseded by Exhibit 3 is hereto attached and marked Exhibit 5.

Fifth. On December 15, 1939, counsel for the plaintiff wrote the Chairman of the Retirement Board requesting a hearing before any finality of determination by the Board in this proceeding. Copy of that letter is attached and made a part hereof and marked Exhibit 6. Reply was made by the Chairman of the Retirement Board on January 3, 1940, a copy of which is attached hereto and made a part hereof and marked Exhibit 7. The time for submission was extended to February 15, 1940. On February 14, 1940, counsel for plaintiff submitted to the Chairman of the Retirement Board a statement of facts and memorandum of law accompanied by a letter. A copy of that statement of facts (the memorandum of law being omitted) is hereto annexed and made a part hereof and marked Exhibit 8; and a copy of that letter is also hereto annexed and made a part hereof and marked Exhibit 9. That statement of facts, Exhibit 8, was accepted under the conditions stated

in that letter, Exhibit 9. On March 12, 1942, counsel for plaintiff wrote to the Chariman of the Retirement Board his letter of March 12, 1942, copy annexed hereto and made a part hereof and marked Exhibit 10, enclosing two affidavits, one of H. A. Bietenduefel, verified March 4, 1942, the other of Wilson B. Little, verified March 2, 1942, both of which are hereto annexed and made parts hereof and marked Exhibits 11 and 12, respectively. These affidavits were accepted by the Board and made a part of the record as per letter of the Secretary of the Board of April 2, 1942, copy of which is hereto annexed and made a part hereof and marked Exhibit 13.

Sixth. On February 3, 1942, the Secretary of the Retirement Board submitted to counsel for plaintiff a proposed decision of the Board, and assigned the case for oral argument. Copy of that proposed decision is annexed hereto and made a part hereof and marked Exhibit 14. On March 27, 1942, counsel for plaintiff filed with the Board its exceptions to the proposed decision. The case was argued before the Board on May 28, 1942, all three members being present. On February 11, 1943, the Board rendered its decision, two members supporting the majority decision. One member dissented in a separate opinion. Copy of the decision and opinions are hereto annexed and made a part hereof and marked Exhibit 15.

Seventh. The exhibits which are annexed to this complaint are true and correct copies of the originals which are a part of the record in this case. From those exhibits the following facts are established and undisputed:

(1) Plaintiff is a public warehouseman chartered to conduct a storage and warehouse business; is engaged solely in the commercial warehousing business at Pittsburgh, Pa.; and was so engaged long prior to August 29, 1935, the effective date of the Railroad Retirement Act of 1935. It issues warehouse receipts pursuant to the Warehouse Receipts Act of the Commonwealth of Pennsylvania—Act of March 11, 1909, P.L. 19. The business is conducted under the direction of the Superintendent of the plaintiff who has full and unrestricted authority to conduct a commercial warehouse business in accordance with the terms of the charter of the plaintiff. On February 13, 1934, plaintiff was certificated as a member of the Code of Fair Competition for the Merchandise Warehousing Trade pursuant to

the National Recovery Act, 48 Stat. 195, and continued as such until the rendering on May 27, 1935 by the United States Supreme Court of its decision in the case of *A. L. A. Schechter Poultry Corp. et al.* v. *United States*, 295 U.S. 495.

Employees of the plaintiff are carried on its payroll, and are paid solely out of its funds. They are hired by plaintiff and discharged by it. They are under no continuing or other authority from The Pennsylvania Railroad Company to supervise and direct the manner of rendition of their services, and never have been. They are not accorded free transportation by The Pennsylvania Railroad Company; they are not entitled to become members of The Pennsylvania Railroad Voluntary Relief Department, membership in which is limited to employees and former employees of the Railroad Company, or of The Pennsylvania Railroad Employes Provident and Loan Association, membership in which is limited to employees of the Railroad Company. They have never been regarded by The Pennsylvania Railroad Company as its employees, nor by the plaintiff as other than its employees. Plaintiff has paid and is paying taxes under the Federal Social Security Act, Titles 8 and 9, and collects from the wages of its employees the tax imposed by Title 8 of the Federal Social Security Act. It also makes contributions under the State Unemployment Compensation Law, P.L. 1937, p. 2897.

(2) The operations of plaintiff are conducted at Pittsburgh, Pa., and at East Liberty, Pa., the latter being within the city limits of Pittsburgh. In each case these operations are in a warehouse building which is leased from The Pennsylvania Railroad Company. The Railroad Company retains a portion on the ground floor of each building where an officially designated freight agency of the Railroad Company is maintained with an agency employed and controlled by it. Each such station is fully equipped with tracks and other facilities for the receipt, delivery and handling of freight inbound and outbound, both carload and less. The operations of each are separate from the operations of the plaintiff. The freight which arrives at the plaintiff's warehouse at East Liberty comes in by rail and moves out in the same way. At its warehouse in Pittsburgh proper about 95% of the business of plaintiff arrives at its warehouse by rail. The balance arrives by

truck but not locally. About 60% moves outbound by rail, principally less than carload. The balance moves out by truck. Incoming freight by rail is consigned to the owner care of the plaintiff. Outbound shipments by rail are made by the plaintiff and in its name, plaintiff acting as agent for such owner.

Plaintiff has a private siding at each warehouse where carlot deliveries are made and shipments accepted by the railroad company. Delivery is made by the car being placed on the siding of the plaintiff. The railroad company has then completed its obligations. The owner unloads. Likewise, in the case of outbound carlot shipments, the railroad company places the car on the siding and the owner loads. The railroad company's obligations begin when the owner has loaded the car and the railroad company has received the property and has issued its covering bill of lading. All such freight, both inbound and outbound, in carloads by rail is carried by the railroad company at carload rates. Loading and unloading by the owner is required by Rule 27, Section 1 of the governing railroad tariff, being Consolidated Freight Classification No. 13, and reading as follows, there being no exceptions as provided in the rule:

> "Owners are required to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by rail carriers, carried at C. L. ratings or rates, except where the tariff of the carrier at point of origin or destination or stopover station (as the case may be) provides for the loading or unloading of C. L. freight by carrier."

All freight delivered by the railroad company to the plaintiff or received by the railroad company from the plaintiff is carried at tariff rates which are subject to the Consolidated Freight Classification. A. H. Greenly's I.C.C.—O.C. 57, Section 1 of Rule 23 of that classification is this:

> "Carriers' agents must not act as agents of shippers or consignees for the assembling or distribution of C. L. or L. C. L. freight."

Section 1 of Rule 14 of the same classification is this:

> "Carload ratings or rates apply only when a carload of freight is shipped from one station, in or on one car, except as provided in Rule 24, in one calendar

day from midnight to midnight, by one shipper for delivery to one consignee at one destination. Only one bill of lading from one loading point and one freight bill shall be issued for such C. L. shipment. The minimum C. L. weight provided is the lowest weight on which the C. L. rating or rate will apply." No exception applies to the freight under consideration here.

The plaintiff files no tariffs with the Interstate Commerce Commission or any state commission. Nor is it a party to any tariff of any railroad company or other common carrier.

(3) In the case of less than carload inbound shipments arriving by rail the freight is unloaded by the railroad company from cars to the platform of its agency, and there delivery is made to the plaintiff by the railroad company and appropriate delivery receipt taken. As to less than carload outbound shipments the plaintiff delivers the property to the agent of the railroad company at its station, and the railroad company issues its bill of lading, loads the shipment into the car and moves it out.

(4) The only commodity which is handled by the plaintiff at its East Liberty warehouse is sugar in carlots. While this freight is in the warehouse it is under the exclusive control and direction of the owner. The responsibility of the plaintiff is that of warehouseman. There is no responsibility of the railroad company. All services accorded the property, such as loading, unloading, storing, ventilating, drying, moistening, packaging and assembling are performed by the plaintiff for the owner and at the direction of the owner and charges for such services are paid to the plaintiff by the owner. While the property is in the custody of the railroad company it is subject to a tariff provision of that company (available not merely to plaintiff but to any carlot shipper of sugar at Pittsburgh and East Liberty) to the effect that if and when shipped outbound in carlots it is subject to the through railroad rate from original shipping point to ultimate railroad destination. A governing rule of the railroad tariff is this:

"While the shipments are stored in transit under these rules their custody and possession as between carrier and the consignee or owner, shall be that of the consignee or owner."

(5) The Pennsylvania Railroad Company delivers to the

plaintiff at its warehouse in Pittsburgh overfreight, damaged refused freight, and damaged unclaimed freight—all occurring while in the possession of the railroad company. In making such delivery to the plaintiff the railroad company entirely severs its connection with the transportation of the property. At the time of such delivery the plaintiff takes entire possession of the freight, reconditions it and sells it at private sale. In case the freight proves to be worthless, plaintiff disposes of it. For these services plaintiff charges the railroad company 10% of the gross proceeds of sale with deductions for any necessary expenses in reconditioning and handling, and remits the balance to the railroad company. These services take place altogether after railroad transportation has been terminated. Plaintiff has never made delivery of any of such freight to the consignee or owner for or on behalf of the railroad company. Nor has plaintiff ever disposed of, under the direction of the railroad company, any of such freight which has become so worthless as to be unsalable.

(6) During a limited period—August 1937 to 15 May 1938—plaintiff conducted a public commercial warehouse business at Erie, Pa., where it stored newsprint paper in carloads. The paper was handled in the same way as sugar is handled at East Liberty. It was consigned to the plaintiff at Erie, and delivery by the railroad company was made by placing the cars on private siding. It was shipped outbound to Pittsburgh in like way after placement of car at private siding and loading. The owner unloaded inbound and loaded outbound. The railroad company had nothing to do with the paper after delivery inbound and before receipt outbound. Plaintiff conducts no warehouse business now at Erie, Pa., and has not conducted such since the 1937-8 period. In fact the plaintiff has terminated its lease at Erie, Pa., and does not further intend to transact any warehouse business at that point.

Eighth. In the valuation of properties of The Pennsylvania Railroad Company by the Interstate Commerce Commission—22 Valuation Reports—the two warehouses heretofore referred to are not classified as carrier properties.

Ninth. (1) The finding of the majority of the Board that "Duquesne's operations are, and have been at least since August 28, 1925, directly related, functionally and

economically, to the performance of the transportation obligations which Pennsylvania has undertaken as a common carrier by railroad, and to the receipt, delivery, transfer in transit, storage, and handling of property transported by Pennsylvania by railroad" is not in accordance with the facts, is unsupported either by any substantial evidence in the record, or in fact by any evidence in the record, is contrary to the evidence in the record, and is arbitrary and contrary to law.

(2) The finding of the majority of the Board that "Duquesne is, and has been at least since August 28, 1935, engaged in the non-casual operation of equipment and facilities and the performance of non-casual service in connection with Pennsylvania's transportation of property by railroad, other than trucking service, and the receipt, delivery, transfer in transit, storage, and handling of property transported by Pennsylvania by railroad" is not in accordance with the facts, is unsupported by any substantial evidence in the record, or in fact by any evidence in the record, is contrary to the evidence in the record, and is arbitrary and contrary to law.

(3) Any other finding of the majority of the Board, either directly or indirectly, to the effect that plaintiff is controlled in its operations or managerial functions by The Pennsylvania Railroad Company; that plaintiff's operations are now and have been at least since August 28, 1935 intimately and integrally related to transportation of The Pennsylvania Railroad Company; that plaintiff is in substance an agency of The Pennsylvania Railroad Company for the purposes of storage, loading and unloading and other handling of goods transported over the lines of that railroad company; that the two warehouses operated by plaintiff, one at Pittsburgh proper and the other at East Liberty in Pittsburgh, have been valuable links in the chain of that railroad company's transportation; or that the services performed by the plaintiff are in connection with property transported by that railroad company, are not in accordance with the facts, are not supported by any substantial evidence in the record, or in fact by any evidence in the record, are contrary to the evidence in the record, and are arbitrary and contrary to law.

(4) The conclusion of the majority of the Board that

"Duquesne is now, and has been at least since August 28, 1935, an 'employer' within the meaning of Section 1 (a) of the Railroad Retirement Act" is not in accordance with the facts, is unsupported by any substantial evidence in the record, or in fact by any evidence in the record, is contrary to the evidence in the record, and is arbitrary and contrary to law.

Tenth. The undisputed facts appearing in the record require a finding that since August 28, 1935, plaintiff has not been engaged in the non-casual operation of equipment and facilities and the performance of non-casual service in connection with the transportation of property by railroad, and the receipt, delivery, transfer in transit, storage, and handling of property transported by railroad; and also require the conclusion that plaintiff is not now and has not been since August 28, 1935, an employer within the meaning of Section 1 (a) of the Railroad Retirement Acts of 1935 and 1937.

WHEREFORE, plaintiff prays (1) that the defendant be required forthwith to prepare, certify and file in the office of the Clerk of this Court a complete transcript of the entire record in this proceeding, including the originals of the exhibits which are attached to this complaint, together with the findings and opinions of both the majority and minority members of the Board; (2) that further procedure by the defendant under or pursuant to its said action or decision be stayed pending the final determination of the matters herein complained of; (3) that the said action and decision of the defendant be set aside and wholly annulled; (4) and that plaintiff have such other and further relief as to the Court may appear just and equitable in the premises.

BURLINGHAM, VEEDER, CLARK & HUPPER,
Attorneys for Plaintiff,
By RAY ROOD ALLEN,
A member of said firm.
Office and Post Office address:
27 William Street
Borough of Manhattan
City of New York, N. Y.

[Exhibits 1-15, inclusive, of the complaint have been omitted in printing pursuant to stipulation, inasmuch as they consist of copies of papers contained in the Record

before the Railroad Retirement Board in Jurisdictional Docket No. 18—In The Matter of Duquesne Warehouse Company, which Record is set forth at pages 18 through 271 of this transcript The text of the respective Exhibits of the complaint may therefore be found in this transcript, as follows:

Exhibit No.		Pages of this transcript where found
1	—	100-101
2	—	108-110, 113-114
3	—	103-107
4	—	103
5	—	58-99
6	—	125-126
7	—	126-127
8	—	133-139, 168-172
9	—	130-131
10	—	176-177
11	—	178-184
12	—	184-232
13	—	262
14	—	233-242
15	—	19-45; 45-57]

IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANT RAILROAD RETIREMENT BOARD

Filed July 21, 1943

Comes now the defendant, the Railroad Retirement Board, and for answer to the complaint respectfully shows to the Court:

1. Defendant Board admits the allegation in paragraph "First" of the complaint that this action arises under the Railroad Retirement Act of 1935, 49 Stat. 967, as amended by the Railroad Retirement Act of 1937, 50 Stat. 307, Part I, Section 1 thereof, and avers that actions arising thereunder are required to be brought pursuant to Section 11 of the Railroad Retirement Act of 1937, which provides that a "person aggrieved may apply to the district court of any

district wherein the Board may have established an office or to the District Court of the United States for the District of Columbia to compel the Board (1) to set aside an action or decision of the Board claimed to be in violation of a legal right of the applicant or (2) to take action or to make a decision necessary for the enforcement of a legal right of the applicant. Such court shall have jurisdiction to entertain such application and to grant appropriate relief." Defendant admits the allegation in paragraph "First" of the complaint that on February 11, 1943, the defendant Board took the action or rendered the decision referred to in the said paragraph "First," but denies the allegation contained in the said paragraph "First" that such action or decision of the defendant is in violation of plaintiff's legal rights. The allegation in paragraph "First" of the complaint that this is also an action arising under a law regulating commerce, 28 U.S. Code, Section 41(8), is a conclusion of law and requires no answer, but defendant, nevertheless, denies the same, and avers that this Court possesses jurisdiction over this action solely by virtue of the provisions of Section 11 of the Railroad Retirement Act of 1937.

2. Defendant admits the first allegation in the first sentence of paragraph "Third" of the complaint, namely, that defendant is an agency established by the Railroad Retirement Act of 1937 for the administration of the Railroad Retirement Acts of 1935 and 1937, and avers that defendant is so established as an independent agency in the executive branch of the Government. Defendant also admits the second allegation of the first sentence of paragraph "Third" of the complaint and the allegation contained in the second sentence of said paragraph. The allegation in the third sentence of paragraph "Third" of the complaint is merely a conclusion of law, requiring no answer, but it is denied, nevertheless, for the reason that Section 9 of the Railroad Retirement Act of 1935 was wholly superseded by Section 11 of the 1937 Act, upon which the jurisdiction of this Court depends.

3. The allegations contained in paragraphs "Second," "Fourth," "Fifth," "Sixth," and "Eighth" of the complaint are made independently of, and without reference to, the record which was before the defendant Board when it made its decision of February 11, 1943, of which plaintiff

is here complaining, and, therefore, such allegations are irrelevant and immaterial and require no answer for the reason that this proceeding is not a *de novo* proceeding, but merely one to review, under Section 11 of the Railroad Retirement Act of 1937, the decision of the defendant Board, and in such a proceeding the Court considers only the evidence in the record before the defendant Board, a certified copy of which is filed herewith and made a part of this Answer. For the information of the Court, however, defendant denies such allegations, except insofar as they are in accord with the findings of fact made by the defendant Board in its decision (R. 1-36).

4. Defendant denies the allegations contained in paragraph "Seventh" of the complaint, except insofar as they are in accord with the findings of fact made by the defendant Board in its decision (R. 1-36).

5. The statements contained in paragraph "Ninth" of the complaint are conclusions of law and require no answer, but, nevertheless, defendant denies the same.

6. The allegations contained in paragraph "Tenth" of the complaint are conclusions of law and require no answer, but defendant, nevertheless, denies the same. Defendant avers that the defendant Board's findings that plaintiff is now, and has been at least since August 28, 1935, completely owned and controlled, through stock ownership, by the Pennsylvania Railroad Company (herein called Pennsylvania), and engaged in the non-casual operation of equipment and facilities and the performance of non-casual service, other than trucking service, in connection with Pennsylvania's transportation of property by railroad, and the receipt, delivery, transfer in transit, storage, and handling of property transported by Pennsylvania by railroad, and that, therefore, plaintiff is now, and has been at least since August 28, 1935, an "employer" within the meaning of Section 1(a) of the Railroad Retirement Act, are reasonable and are supported by substantial evidence appearing in the record before the Board, to wit:

The relevant provisions of Section 1(a) of the Railroad Retirement Act are as follows: "The term 'employer' means any carrier [express company, sleeping-car company, or carrier by railroad subject to Part I of the Interstate Commerce Act] * * * and any company which is directly or indirectly owned or controlled by one or more

such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *." All of plaintiff's stock has always been owned and controlled by Pennsylvania, a carrier by railroad subject to Part I of the Interstate Commerce Act, and plaintiff's principal officers have been officers of Pennsylvania (R. 57, 58, 105, 130); and at least since August 28, 1935, plaintiff has been primarily, principally, and predominantly engaged in the receipt, delivery, transfer in transit, storage, and other handling of goods transported over the railroad lines of Pennsylvania (R. 58-60, 105-106, 131-135).

Plaintiff operates two warehouses, one in Pittsburgh proper and the other at East Liberty, within the city limits of Pittsburgh. Both warehouses are owned by Pennsylvania and operated by plaintiff under lease from Pennsylvania. A portion of the ground floor of each warehouse is retained by Pennsylvania and used and officially designated by it as its "freight agency." Plaintiff's warehouses and Pennsylvania's "freight agencies" are both served by the same railroad tracks of Pennsylvania and are equipped with platforms or sidings and other facilities for the receipt, delivery, and handling of inbound and outbound freight of Pennsylvania (R. 105, 130-131).

At the East Liberty warehouse, plaintiff handles and stores only one commodity, carload sugar, all of which comes in and goes out over Pennsylvania's rails (R. 58, 105, 131). The sugar is handled by plaintiff under storage-in-transit privileges covered by railroad tariffs filed by Pennsylvania with the Interstate Commerce Commission (R. 58, 132). Incoming shipments are consigned to the owner care of Duquesne, the route being designated as "Penn RR—For Stge in Transit"; and outgoing shipments are consigned to the owner, the bill of lading having a transit record number and being marked "accorded transit privileges at East Liberty, Pa." (R. 131, 165, 166). Plaintiff unloads the sugar from the Pennsylvania's railroad cars upon their arrival and reloads the sugar into

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Pennsylvania's railroad cars upon their departure (R. 58, 106, 131, 132). In the case of incoming sugar, delivery is made by Pennsylvania and receipt is taken by plaintiff when Pennsylvania places the railroad cars on plaintiff's siding and plaintiff then unloads. In the case of outgoing shipments, the empty railroad cars are placed by Pennsylvania on plaintiff's siding and loaded by plaintiff, which then receives Pennsylvania's bill of lading (R. 59, 131).

At its Pittsburgh warehouse, plaintiff handles freight which has come in, or is destined for movement, over Pennsylvania's rails, or which has both come in and is going out over Pennsylvania's rails. Approximately 95 per cent of the commodities handled at that place, which commodities are diverse in character and are hauled in both carload and less-than-carload form, come in by rail, and approximately 60 per cent leave by rail (R. 105, 133). The services performed by plaintiff at the Pittsburgh warehouse are similar to those at East Liberty insofar as carload freight is concerned. Plaintiff loads and unloads the railroad cars as they come onto and depart from its platform, stores the railroad-transported goods, and performs other handling services in connection with the receipt and delivery of the railroad-transported goods (R. 59, 106, 131, 133). As to the less-than-carload freight, plaintiff, in addition to storing it, performs the handling involved in delivering it to and receiving it from Pennsylvania's platform. In the case of incoming less-than-carload shipments, the freight is unloaded by Pennsylvania from the cars to its platform and is delivered to and received by plaintiff on such platforms. In the case of outgoing less-than-carload shipments, plaintiff delivers the freight onto Pennsylvania's platform; Pennsylvania then issues its bill of lading, loads the freight into the cars, and moves them out (R. 59, 106, 133).

Plaintiff also performed, during the period between August 1937 and May 1938 unloading, storing, and reloading services and other transit details at Erie, Pennsylvania, in connection with carload shipments of newspaper print entitled to storage-in-transit privileges under Pennsylvania's tariffs. These services were similar to those performed by plaintiff at East Liberty (R. 58, 135).

Plaintiff, in addition, performs services "in connection with" the transportation of property by railroad in

handling, reconditioning, and selling for Pennsylvania over freight, damaged refused freight, and damaged unclaimed freight. Out of the gross proceeds realized by plaintiff from each sale of freight delivered to it for disposal by Pennsylvania, plaintiff deducts a commission of 10 per cent and any amounts paid by it for reconditioning, drayage, freight, and other charges, and turns the balance over to Pennsylvania. When any freight is returned by plaintiff to Pennsylvania upon the latter's order, Duquesne is reimbursed only for the actual expenses incurred by it plus storage charges (R. 59, 83-86, 105, 133-134, 175-178). Under the original contract between plaintiff and Pennsylvania, entered into on February 1, 1922, if any lot of freight became so worthless as to be unsalable, plaintiff was required to dispose of it as directed by Pennsylvania (R. 85). Under the new contract of January 2, 1941, plaintiff is given authority to dispose of such goods as it sees fit (R. 176). The original contract also provided that if the owner of any unclaimed freight is ascertained prior to the sale of such freight, plaintiff was to deliver such freight, upon instructions from Pennsylvania, to the owner, and was to receive from the owner such charges as plaintiff has paid to Pennsylvania (R. 84). The new contract provides that under such circumstances plaintiff shall, upon Pennsylvania's request, return such freight to Pennsylvania upon repayment of all charges thereon which plaintiff shall have paid to Pennsylvania (R. 176).

WHEREFORE, the defendant Board prays that the complaint be dismissed and the said decision of the defendant Board be sustained.

(Signed) JOSEPH H. FREEHILL
Joseph H. Freehill
Attorney for Defendant
Railroad Retirement Board
844 Rush Street
Chicago, Illinois

July 19, 1943

CERTIFIED COPY OF RECORD BEFORE RAILROAD RETIREMENT BOARD IN JURISDICTIONAL DOCKET NO. 18 IN THE MATTER OF DUQUESNE WAREHOUSE COMPANY

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 Rush Street
Chicago, Illinois

Murray W. Latimer
Chairman
L. M. Eddy
F. C. Squire

July 16, 1943

I, Mary B. Linkins, Secretary of the Railroad Retirement Board, hereby certify that the attached two hundred and seventy-seven pages, numbered for the purpose of this certification, 1 through 277, constitute a true copy of the record before the Board in Jurisdictional Docket No. 18, In the Matter of Duquesne Warehouse Company.

(Signed) MARY B. LINKINS
Secretary of the
Railroad Retirement Board

[Seal of Railroad
Retirement Board]

RAILROAD RETIREMENT BOARD

In the Matter of Duquesne Warehouse Company } Jurisdictional Docket No. 18

DECISION OF THE BOARD

Statement of the Case

In order to enable determination of claims for annuities under the Railroad Retirement Act based in part upon service rendered to the Duquesne Warehouse Company, herein called Duquesne, the General Counsel, under duly delegated authority, ruled on May 23, 1939, that Duquesne is an "employer" under the Railroad Retirement Act, and that, consequently, service rendered to it from August 1, 1906, the date of its incorporation, to date, is creditable toward annuities under that Act. Duquesne Warehouse Company, Railroad Retirement Board Law Bulletin No. 2, page 530. The ruling of the General Counsel was based on Duquesne's response to the Board's Questionnaire Form LQ-2 (revised) which is contained in the record herein.

On September 15, 1939, counsel for Duquesne appeared before Board Members Eddy and Reed to protest the ruling of the General Counsel and submitted a memorandum in support of Duquesne's position and a completed Board Questionnaire Form LQ-2-c. Upon requests of counsel, Duquesne was allowed until February 15, 1940, to file further evidence and argument in support of its position that it is not an "employer" within the meaning of the Railroad Retirement Act. Duquesne filed, on February 14, 1940, a memorandum of law and a statement of facts which was made part of the record herein.

On January 29, 1942, the Board issued a proposed decision that Duquesne is an "employer" under the Act as a company directly owned and controlled by a "carrier employer" under the Act and engaged in the non-casual operation of equipment and facilities and the performance of non-casual services in connection with the transportation of property by railroad, other than trucking service, and the receipt, delivery, transfer in transit, storage, and handling of property transported by railroad. On March

28, 1942, Duquesne filed exceptions to the Board's proposed decision and a brief in support of such exceptions. At about the same time, Duquesne requested that the Board include in the record affidavits from H. B. Bietenduefel, Duquesne's Superintendent, and Wilson V. Little, Executive Secretary of the American Warehousemen's Association, containing facts which had been developed since February 14, 1940. The request was granted. Pursuant to Duquesne's further request, a hearing was held before the Board on May 27, 1942, for the purpose of oral argument upon the issues raised in the proceeding. In addition to Duquesne, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, herein called the Brotherhood of Railway Clerks, was represented and participated at such hearing. The position of the Brotherhood of Railway Clerks, representing Duquesne's employees, is that Duquesne is an "employer" under the Railroad Retirement Act.

3 Findings of Fact and Conclusions

After careful consideration of the record herein, the exceptions and brief filed by Duquesne, and the arguments of Duquesne and the Brotherhood of Railway Clerks, the Board makes the following findings of fact and conclusions:

Findings of Fact

1. Duquesne was incorporated on August 1, 1906, under the laws of the State of Pennsylvania. Since Duquesne's incorporation, it has been directly and completely owned and controlled, through stock ownership, by the Pennsylvania Railroad Company, herein called Pennsylvania, a carrier by railroad subject to Part I of the Interstate Commerce Act.

2. Duquesne's principal officers are also officers of Pennsylvania. As of February 17, 1939, such common officers were as follows:

Duquesne Office	Pennsylvania Office
E. W. Smith, President and Director	Vice President
W. S. Franklin, Director	Vice President
J. Taney Willcox, Secretary	Secretary
J. Gordon Watson, Assistant Secretary	Assistant Secretary
Geo. H. Papst, Jr., Treasurer	Assistant Vice President and Treasurer
H. W. Schotter, Assistant Treasurer	Assistant Treasurer
John Pemberton, Jr., Assistant Treasurer	Assistant Treasurer
F. J. Fell, Jr., Comptroller	Vice President and Comptroller
Elmer Hart, Assistant Comptroller	Deputy Comptroller
A. R. Meredith, Real Estate Agent	Real Estate Agent

4 3. Duquesne's operations are now and have been at least since August 28, 1935, intimately and integrally related to Pensylvania's railroad transportation. Duquesne has been primarily, principally and predominantly engaged in the storage, loading and unloading, and other handling of goods transported over the lines of Pennsylvania, being in substance an agency of Pennsylvania for such purposes.

4. The two warehouses operated by Duquesne—one in Pittsburgh proper and the other at East Liberty in Pittsburgh—have been valuable links in the chain of Pennsylvania's railroad transportation. They are owned by Pennsylvania and are operated by Duquesne under lease from Pennsylvania. A portion of the ground floor of each warehouse is retained by Pennsylvania and used and officially designated by it as its "freight agency." Duquesne's warehouses, as well as Pennsylvania's "freight agencies", are served by Pennsylvania's railroad tracks and are equipped with platforms or sidings and other facilities for the receipt, delivery, and other handling of inbound and outbound freight.

5. At the East Liberty warehouse, Duquesne handles and stores only one commodity, carload sugar, which comes in and goes out over Pennsylvania's rails. The sugar is handled by Duquesne under storage-in-transit privileges permitted and covered by railroad tariffs filed by Pennsylvania with the Interstate Commerce Commission. Part of the sugar which passes through Duquesne's warehouse is refined in California and part in New York. That refined in California is moved by ship to one of the eastern ports, such as Philadelphia or Baltimore, and thence by

rail to Pittsburgh; and that refined in New York is
5 shipped by rail directly form New York to Pittsburgh.
At Duquesne's warehouse, which is used as a distribution center, the packages of sugar are assembled in the proper number and sizes and then shipped out over Pennsylvania's lines for distribution. Incoming shipments are consigned to the owner care of Duquesne, the route being designated as "Penn R R—For Stge in Transit"; and outgoing shipments are consigned to the owner, the bill of lading having a transit record number and being marked "accorded transit privileges at East Liberty, Pa." Both the unloading of the sugar from, and its reloading into, Pennsylvania cars are performed by Duquesne at the latter's siding for the account of the shipper in accordance with the governing rail tariff (Consolidated Freight Classification No. 13) requiring owners to load and unload freight carried at carload rates. In the case of incoming sugar, delivery is made by Pennsylvania and receipt is taken by Duquesne when Pennsylvania places the cars on Duquesne's siding, and Duquesne then unloads. In the case of outgoing shipments, the empty cars are placed by Pennsylvania on Duquesne's siding and loaded by Duquesne, which then receives Pennsylvania's bill of lading. The handling and storage charges are billed by Duquesne directly against the owners of the property and are paid by such owners.

6. At its Pittsburgh warehouse, Duquesne is principally engaged in the handling of freight which has come in, or is destined for movement, over Pennsylvania's rails, or which has both come in and is going out over Pennsylvania's rails. Approximately 95 per cent of the commodities handled at that place, which commodities are diverse in character and are hauled in both carload and less-
6 than-carload form, come in by rail, the remainder coming in by truck. The respective rail and truck percentages of the outgoing commodities are 60 and 40. The services performed by Duquesne at the Pittsburgh warehouse are similar to those at East Liberty insofar as carload freight is concerned, except that no sugar is handled. As to the less-than-carload freight, Duquesne, in addition to storing it, performs the handling involved in delivering it to and receiving it from Pennsylvania's platform. The loading and unloading of less-than-carload freight is per-

formed by Pennsylvania at its platform. In the case of incoming less-than-carload shipments, the freight is unloaded by Pennsylvania from the cars to its platform and is delivered to and received by Duquesne on such platform. In the case of outgoing less-than-carload shipments, Duquesne delivers the freight onto Pennsylvania's platform; Pennsylvania then issues its bill of lading, loads the freight into the cars, and moves them out.

7. Duquesne also performed, during the period between August 1937 and May 1938 unloading, storing, and reloading services and other transit details at Erie, Pennsylvania, in connection with carload shipments of newspaper print entitled to storage-in-transit privileges under Pennsylvania's tariffs. These services were similar to those performed by Duquesne at East Liberty.

8. Duquesne's position as an agency of Pennsylvania, available to provide such facilities and services as the latter requires, appears further from Duquesne's handling, reconditioning, and selling for Pennsylvania, over freight, damaged refused freight, and damaged unclaimed freight under a contract originally entered into between the two companies on February 1, 1922, and superseded by a contract dated January 2, 1941. Pennsylvania transports to Pittsburgh any freight it desires to be disposed of by Duquesne and Duquesne removes such freight to its warehouse after the payment to Pennsylvania of all freight and other charges that may have accrued thereon. Out of the gross proceeds realized by it from each sale, Duquesne deducts a commission of 10 per cent and any amounts paid by it for reconditioning, drayage, freight, and other charges, and turns the balance over to Pennsylvania. In the event that the gross proceeds of the sale of freight do not equal the expenses incurred by Duquesne, plus the 10 per cent commission, Duquesne is credited with the difference. When any freight is returned by Duquesne to Pennsylvania upon the latter's order, Duquesne is reimbursed only for the actual expenses incurred by it plus storage charges. Under the original contract, if any lot of freight became so worthless as to be unsalable, Duquesne was required to dispose of it as directed by Pennsylvania. Under the new contract, Duquesne is given authority to dispose of such goods as it sees fit. The original contract also provided that if the owner of any unclaimed freight

is ascertained prior to the sale of such freight, Duquesne was to deliver such freight, upon instructions from Pennsylvania, to the owner, and was to receive from the owner such charges as Duquesne has paid to Pennsylvania. The new contract provides that under such circumstances Duquesne shall, upon Pennsylvania's request, return such freight to Pennsylvania upon repayment of all charges thereon which Duquesne shall have paid to Pennsylvania.

8 9. Duquesne's revenues for the years 1936 through 1938 show the substantial extent to which it has been engaged in functions and activities connected with Pennsylvania's railroad transportation:

	Storage and handling of freight under storage-in-transit privileges	Storage and handling of other freight (including freight coming in or going out, or both, over Pennsylvania's rails)	Sale of damaged merchandise	Subleasing of space to manufacturing concerns
1936	$ 59,570.40	$ 63,011.60	$ 8,599.00	$32,732.00
1937	30,239.93	91,545.99	11,409.00	24,967.00
1938	29,836.01	73,702.99	8,881.86	16,035.17
	$119,646.34	$228,260.58	$28,889.86	$73,734.17

10. In addition to the above revenue figures, the substantial extent to which Duquesne has been engaged in the handling of freight accorded storage-in-transit privileges may be stated in terms of space used. Of the total space used by Duquesne at its warehouses at East Liberty and Pittsburgh, approximately 30 per cent was devoted to the handling of freight accorded storage-in-transit privileges in 1936; approximately 12.5 per cent in 1937, and approximately 12.5 per cent in 1938. During the period of operation at Erie, all the space at that point was used for such freight.

11. All of Duquesne's operations are intermingled. Duquesne's employees are not assigned exclusively to any one operation but are frequently shifted from one class of work to another. The extent to which personnel was required, however, for the various operations for the years 1936 through 1938, estimated on the basis of the approxi-

mate number of men required on a full-time basis to perform the work in such operations, is as follows:

	Storage and handling of freight under storage-in-transit privileges	Storage and handling of other freight (including freight coming in or going out, or both, over Pennsylvania's rails)	Sale of damaged merchandise	Subleasing of space to tenants
1936	28	30	3	4
1937	14	42	3	4
1938	14	42	3	4

12. Duquesne's employees are affiliated with one of the railway labor organizations, the Brotherhood of Railway Clerks, and their working conditions are governed by a contract between the Brotherhood and Duquesne.

13. Duquesne's operations are, and have been at least since August 28, 1935, directly related, functionally and economically, to the performance of the transportation obligations which Pennsylvania has undertaken as a common carrier by railroad, and to the receipt, delivery, transfer in transit, storage, and handling of property transported by Pennsylvania by railroad.

14. Duquesne is, and has been at least since August 28, 1935, engaged in the non-casual operation of equipment and facilities and the performance of non-casual service in connection with Pennsylvania's transportation of property by railroad, other than trucking service, and the receipt, delivery, transfer in transit, storage, and handling of property transported by Pennsylvania by railroad.

10 CONCLUSIONS

Applying the established principles of law to the facts in this case, it is concluded that Duquesne is now, and has been at least since August 28, 1935, an "employer" within the meaning of Section 1(a) of the Railroad Retirement Act, and that compensated service rendered to Duquesne from August 1, 1906, the date of its incorporation, to date, is creditable for purposes of that Act.

OPINION

Duquesne concedes that it is directly owned by Pennsylvania within the meaning of Section 1(a) of the Railroad Retirement Act. And, in fact, it is clear upon the record that Duquesne has been both directly owned and controlled by Pennsylvania from the very beginning of Duquesne's corporate existence. All of Duquesne's stock has always been owned and controlled by Pennsylvania and Duquesne's officers have been officers of Pennsylvania.

The only issue here is whether Duquesne is engaged in the non-casual operation of equipment or facilities or the performance of non-casual service in connection with the transportation of property by railroad, or the receipt, delivery, transfer in transit, storage, or handling of property transported by raiload, within the meaning of Section 1(a) of the Railroad Retirement Act.[1]

11 That Duquesne is so engaged follows from our ruling of February 21, 1939, B.O. No. 39-84, R.R.B. Law Bull. No. 2, p. 532, that the Baltimore Fidelity Warehouse Company, a company operating a terminal warehouse business at points adjacent to freight terminals of the Baltimore and Ohio Railroad Company and storing goods which have been transported or are awaiting transportation by railroad, is an "employer" under the Railroad Retirement Act;[2] and from a number of decisions follow-

[1] The relevant provisions of Section 1(a) are as follows:
"The term 'employer' means any carrier [express company, sleeping-car company, or carrier by railroad subject to part I of the Interstate Commerce Act] . . . , and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad. . ."

[2] Duquesne does not apparently question the validity of the Board's ruling in the *Baltimore Fidelity* case, but seeks rather to distingish that case from the present one on the ground that Baltimore Fidelity, in addition to its warehousing activities, solicited freight as agent for its controlling carrier. Although its minor activity of freight solicitation served to emphasize the intimate relationship between Baltimore Fidelity and its controlling carrier, the determinative factor in that case was that Baltimore Fidelity, under conditions of a close operating relationship with its parent carrier, has been engaged in the storage of goods which, for the most part, have been transported or are awaiting transportation over the lines of its parent carrier.

ing that ruling. *B. R. & P. Warehouse, Inc.*, R.R.B. Law Bull. No. 2, p. 527; *Terminal Storage Company of Washington, id.*, p. 524; *Lackawanna Terminal Warehouses, Inc., id.*, p. 537; *North Western Warehouse Company*, L-41-315; *Oklahoma Bonded Warehouse Company*, L-41-259; *Overland Terminal Warehouse Company*, L-42-288.

As appears in our findings, Duquesne is principally engaged in the following activities: (1) loading and unloading of carload freight transported over Pennsylvania's lines, (2) receipt and delivery of carload freight and less-than-carload freight transported over Pennsylvania's rails, (3) storage of goods under Pennsylvania's storage-in-transit privileges, (4) storage of goods coming in or going out, or both, over Pennsylvania's rails, and (5) handling Pennsylvania's damaged and over freight. In our opinion,
12 all these activities are clearly included within the language of Section 1(a) of the Act enumerating the activities which will qualify a carrier affiliated company as an "employer."

It is evident that the first three activities are performed in connection with "the receipt," "delivery," "transfer in transit," "storage," and "handling" of property transported by railroad. In fact, when Duquesne loads and unloads, receives and delivers, stores, and otherwise handles goods under Pensnylvania's storage-in-transit privileges, it not merely performs services "in connection with" transfer in transit, but it *transfers in transit*. See *Southern Pacific Terminal Company* v. *Interstate Commerce Commission*, 219 U.S. 498, 526-527; *Storage of Cocoa Beans in New York District*, 231 I.C.C. 575, 577. It may be noted that in reply to question 6(a) of Board Questionnaire Form LQ-2 (revised), calling for a description of "the operation of any equipment or facilities, or the performance of any services by respondent in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad," Mr. E. W. Smith, Duquesne's president, set forth the arrangements whereby Duquesne "unloads, stores, reloads, and handles other transit details" at East Liberty and Pittsburgh.

It is also clear, in our opinion, that under the circumstances of this case the functions and activities of Duquesne

as to the storage of goods which are not in transit but which have been transported or are awaiting transportation over Pennsylvania's lines constitute services "in connection with the transportation of * * * property by railroad." When it is considered that Duquesne's warehouses are located next to Pennsylvania's freight agencies
13 and are highly convenient for use by shippers and consignees of goods transported by Pennsylvania, and that the availability of such storage facilities largely determines the rail route over which property will be shipped, it becomes clear that such storage functions and activities are closely related, functionally and economically, to Pennsylvania's railroad transportation and therefore constitute services "in connection with the transportation of * * * property by railroad." Section 202.07 of the Regulations, 20 Code Fed. Reg. 856; *Baltimore Fidelity Warehouse Company, B. R. & P. Warehouse, Inc., Terminal Storage Company of Washington, Lackawanna Terminal Warehouses, Inc., North Western Warehouse Company, Oklahoma Bonded Warehouse Company, Overland Terminal Warehouse Company*, all *supra*. It may be noted that warehousing activities like those of Duquesne are conducted by numerous railroads throughout the
14 United States, either directly or through subsidiaries, as an incident to their rail transportation service, because by providing such services, railroads are able to induce shippers to use their rail facilities and thereby in-

[a] See, e.g., *Baltimore & Ohio R. R. Co. v. United States*, 305 U. S. 507, where the Supreme Court stated as follows (at pp. 516-517):

"All of the carriers 'now generally store freight on piers owned or leased by them in warehouses operated by affiliated or subsidiary companies.' This business is carried on in various ways. Some carriers lease space to shippers for warehousing; others have aided in financing structures on their property in which they lease space from their own subsidiaries; and still others own directly the buildings and lease them to subsidiaries for warehouse operations. In all cases the carriers exercise sufficient control over the warehouse facilities to make them subservient to the competitive needs of the carriers. Their entrance into warehousing was brought about by a desire to induce shippers to use particular rail facilities and as first one and then the other of the carriers gained traffic by their warehouse conveniences, it seemed necessary for their competitors to equip themselves with similar advantages. Obviously a shipper, who can secure transportation, storage, handling and insurance together from a carrier and its affiliates for an aggregate cost which is less than the sum for which he can secure the various services when purchased separately from carriers and non-affiliated enterprises, will deal with those offering the best terms. The storage largely determines the transportation route."

crease the volume of traffic over their respective lines. See, e. g., *Baltimore and Ohio Railroad Co.* v. *United States*, 305 U.S. 507; *Propriety of Operating Practices—New York Warehousing*, 198 I.C.C. 134, 216 I.C.C. 291; *McCormick Warehouse Co.* v. *P. R.R. Co.*, 95 I.C.C. 301; *New York Storage*, 40 I.C.C. 265. And it has been recognized that such warehousing activities are conducted for the same purposes and achieve the same results, whether they are conducted directly by the railroads or by subsidiaries of the railroads. See *Baltimore and Ohio Railroad Co.* v. *United States*, 305 U. S. 507, 516-517; *Propriety of Operating Practices—New York Warehousing*, 198 I.C.C. 134, 138-139; 216 I.C.C. 291, 293-294.[*]

15 Duquesne is also engaged in the performance of services "in connection with" railroad transportation in handling, reconditioning, and selling for Pennsylvania over freight, damaged refused freight, and damaged unclaimed freight. These services are directly related to Pennsylvania's railroad transportation since the need therefor arises directly out of Pennsylvania's transportation activities and they are, in substance, performed simply on behalf of Pennsylvania and constitute a means whereby Pennsylvania is enabled to collect freight and other charges on unclaimed goods and to recoup losses on goods damaged in transit. Section 202.07 of the Regulations, *Supra*.

Counsel for Duquesne contends that Section 1(a) of the Railroad Retirement Act is limited in scope to those services which constitute "transportation" as defined in Section 1(3) of the Interstate Commerce Act. The invalidity of this contention is shown hereafter. But even assuming that such a contention could be sustained, we believe that Duquesne would nevertheless be an "employer" because

[*] In the reports on *Propriety of Operating Practices—New York Warehousing*, the Interstate Commerce Commission stated that, although in some cases the warehousing facilities are owned and operated directly by the carrier, and in others, by affiliated or subsidiary companies, "the result is always the same, namely, possession and control of warehouse facilities available to serve whatever competitive purposes railroad management may have in mind." The Commission held (198 I.C.C. 134, at p. 197):

"We cannot sustain the view that freight rates and storage or warehousing charges are not to be considered together because the warehousing services are in some instances conducted by separate corporations or companies. The record clearly shows that the interests of the carriers in those corporations or companies extend to complete and active domination and control. The substance and not mere form of the relations should govern."

it is engaged in many services which clearly fall within the term "transportation" as defined in Section 1(3) of the Interstate Commerce Act. Duquesne loads and unloads railroad cars. Such loading and unloading have repeatedly been recognized as direct and important elements of railroad transportation, *Baltimore and Ohio Southwestern Railroad Co.* v. *Burtch*, 263 U.S. 540, 544; *Atchison, Topeka & Santa Fe Railway Co.* v. *United States*, 295 U.S. 193, 198; *Loading and Unloading Carload Freight*, 101 I.C.C. 394; and have been held to constitute "transportation" as 16 defined in Section 1(3) of the Interstate Commerce Act. *Adams* v. *Mills*, 286 U.S. 397; *Merchants Warehouse Co.* v. *United States*, 283 U.S. 501; *Haberman* v. *Pennsylvania R. Co.*, 234 I.C.C. 167, 173; *Loading and Unloading Carload Freight*, 101 I.C.C. 394; *McCormick Warehouse Co.* v. *P. R.R. Co.*, 95 I.C.C. 301. As stated in our findings, Duquesne receives, delivers, and handles property transported by railroad and performs services in connection therewith. The language as to "receipt," "delivery," and "handling" in the Railroad Retirement Act and the Interstate Commerce Act is identical. Duquesne's activities in receipt, delivery, and handling of property transported by railroad are plainly within the definitions of both Acts. Finally, Duquesne is also extensively engaged in performing transfer-in-transit and storage-in-transit of goods transported by Pennsylvania and allowed that transit privilege under Pennsylvania's tariffs, *Storage of Cocoa Beans in New York District*, 231 I.C.C. 575. Such storage and transfer services are within the definition of "transportation" in Section 1(3) of the Interstate Commerce Act. *American Warehousemen's Association* v. *Inland Waterways Corporation*, 188 I.C.C. 13; *Storage in Transit at New Haven, Conn.*, 190 I.C.C. 209; *Storage at New London and Thamesville, Conn.*, 190 I.C.C. 213; *Propriety of Operating Practices—New York Warehousing*, 220 I.C.C. 102, 103, aff'd *Baltimore & Ohio R.R. Co.* v. *United States*, 305 U.S. 507.

Counsel for Duquesne earnestly urges that the services performed by Duquesne are not within the definition of "transportation" in Section 1(3) of the Interstate Commerce Act because Pennsylvania is not under a duty to shippers or consignees to perform such services. However

it may be as to Pennsylvania's being under legal obli-
17 gation to perform such services, we are unable to find,
and Duquesne presents no plausible warrant for the assertion, implicit in its contention, that the coverage of services under Section 1(a) of the Railroad Retirement Act should have read into it a requirement that the particular activities of the subsidiary must be part of the carrier's legal obligations to the public. Even if Section 1(a) is coextensive with Section 1(3) of the Interstate Commerce Act—that is, with the definition of "transportation" contained in that section—it by no means follows that it should further be limited by the extraneous and variable factors which would determine whether the services were by statute or undertaking a part of the parent carrier's obligations to the public. Section 1(a) applies to a kind of operation, and is concerned with the type of work the subsidiary is doing. It is not cast in terms of legal duty or responsibility, and there is no warrant for construing it as if it did. Section 1(3) itself, to which Section 1(a) is likened, speaks solely as a definition. It is settled that the definition of "transportation" in Section 1(3) includes services which a carrier may choose to, but need not, perform. *American Warehousemen's Association* v. *Inland Waterways Corporation*, 188 I.C.C. 13, 15; *Berg Industrial Alcohol Co.* v. *Reading Co.*, 142 I.C.C. 161. It is by virtue of other provisions of the Interstate Commerce Act that under varying circumstances varying legal consequences attach to activities embraced by the definition.

The contention of Duquesne's counsel that the coverage of Section 1(a) of the Railroad Retirement Act should be restricted to services which constitute transportation as defined in Section 1(3) of the Interstate Commerce Act has long since been rejected in many precedents settled in
Board administration of the Railroad Retirement and
18 Railroad Unemployment Insurance Acts. The fallacies which underlie this contention are thoroughly discussed in our decisions in *Lenoir Car Works*, May 6, 1939, B.O. 39-291, R.R.B. Law. Bull. No. 2, p. 323, and *Union Pacific Coal Company*, May 31, 1940, B.O. 40-299. However, in view of the emphasis given to this point by Duquesne, a recapitulation of the Board's position with respect thereto may be helpful.

In light of the general purpose of the Railroad Retire-

ment Act and accepted doctrines of statutory construction, the Board has construed the carrier affiliate coverage provision as denoting services which are an integral part of, or are closely related to, the rail transportation system of a carrier and as including within its coverage (1) carrier affiliates engaged in activities which are themselves railroad transportation or which are rendered in connection with goods in the process of transportation, such as loading and unloading railroad cars, receipt, delivery, transfer in transit, and other handling of property transported by railroads; and also (2) carrier affiliates engaged in activities which enable a railroad to perform its rail transportation, such as maintenance and repair of way and equipment, and activities which enable a railroad to operate its rail system more successfully and to improve its services to the public, such as auxiliary bus transportation, dining facilities, and incidental warehousing services.

19 In the Board's opinion, the intent to include the second category of services is expressed in the Act by the language "any service • • • in connection with the transportation of passengers or property by railroad." The phrase "service *in connection with* transportation • • • by railroad," according to the ordinary usage of language, is not restricted to services which are themselves "transportation" by railroad or which are performed on goods in the course of transportation by railroad, but necessarily includes services which are connected with and relate to railroad transportation. This is confirmed by judicial definition. *Danciger* v. *Cooley*, 248 U.S. 319, 327; *Kokusai Kisen Kabushiki Kaisha* v. *Columbia S. Co.*, 23 Supp. 403, 405-406 (S.D. N.Y.), aff'd without opinion, 100 F. (2d) 1016 (C.C.A. 2d); *J. Ray Arnold Lbr. Corp.* v. *Richardson*, 105 Fla. 204, 141 So. 133, 135; *Guxney* v. *Atlan. & G. W. Ry. Co.*, 58 N. Y. 358, 366, 371-372; *Wallrabenstein* v. *Industrial Comm.*, 195 Wis. 15, 216 N.W. 495, 496.[5] In the

[5] In *Lehigh Valley R. R. Co.* v. *United States*, 243 U. S. 444, the court expressly recognized that services rendered by a forwarder to a railroad in maintaining offices, advertising the railroad, and soliciting traffic over it were "in a practical sense connected with such transportation." (pp. 446-447). The case, however, arose under Section 15(13) of the Interstate Commerce Act, which provides that "if the owner of property transported . . . directly or indirectly renders any service connected with such transportation . . . the charge and allowances therefor shall be no more than is just and reasonable . . ." This Section was designed simply to permit a shipper to receive an allowance from a carrier for the perfor-

20 *Danciger* case, the Supreme Court stated (p. 327):

"To be within the statute it is essential that the act of collecting the purchase price be done 'in connection with the transportation of' the liquor. *The statute does not say 'in the transportation', but 'in connection with' it.* * * * What Cooley did, while not part of the transportation, was closely connected with it." (Underscoring supplied.)

If there were any doubt as to the correctness of the Board's interpretation of the carrier affiliate coverage provision, no doubt could persist in the face of express statements in confirmation by the Congressional committee reports on the Railroad Retirement Act and also on the Carriers Taxing Act, the "employer" definition of which is the same as that of the Railroad Retirement Act. The Senate Committee on Interstate Commerce, in reporting on the Railroad Retirement Act of 1937, stated that "there are brought within the scope of the Act substantially all those organizations which are intimately related to the transportation of passengers or property by railroad in the United States." S. Rep. No. 697, 75th Cong., 1st Sess., p. 7. Substantially the same statements were made in the Reports, both of the Senate Committee on Finance and the House Committee on Ways and Means, accompanying the
21 Carriers Taxing Act of 1937. S. Rep. No. 818, 75th Cong., 1st Sess., p. 4; H. Rep. No. 1071, 75th Cong., 1st Sess., p. 5. In the latter reports (S. Rep. p. 2; H. Rep. p. 3), it is also stated that "the scope of the existing tax legislation has been changed in such way as to bring into the coverage substantially all those who are intimately associated with the operation of United States railroads." It may further be noted that Senator Wagner, who was in

mance of part of a carrier's transportation service. From its context, therefore, it obviously can relate only to services which are a part of the actual transportation that a carrier is obligated to furnish and are susceptible of a charge or allowance. Accordingly, despite its recognition given to the ordinary meaning of the term "connected," the court was constrained to hold that the services are not covered by the statute. Certain other provisions of the Interstate Commerce Act which contain a similar phrase are, from their context, applicable only to services which the railroad is obligated under its tariffs to furnish and for which a shipper may be charged. See, for example, Section 1(5) which requires that charges for services "in the transportation of passengers or property . . . or in connection therewith" be just and reasonable; and Section 6(7) which forbids departures from the published tariff rates "for such transportation of passengers or property, or for any services in connection therewith."

charge of the Railroad Retirement Act of 1937 on the floor of the Senate, stated that the Act "covers a great number of employees, not only those directly in the railroad business but those associated with it." Cong. Rec., vol. 81, part 6, p. 6223.

The construction that the carrier affiliate coverage provision denotes services which are an integral part of, or are related to, the rail transportation system of a carrier, or, as stated in the committee reports on the legislation, services "which are intimately related to the transportation of passengers or property by railroad," and those "intimately associated with the operation of United States railroads," has been applied consistently in the relevant administrative determinations by both the Railroad Retirement Board, in its administration of the Railroad Retirement and Railroad Unemployment Insurance Acts, and by the Bureau of Internal Revenue, in its administration of the Carriers Taxing Act, and, with isolated exceptions, has been accepted by the parties and acted upon accordingly. The Board has embodied this construction in a formal regulation adopted June 1, 1938 (Section 202.07 22 of the Regulations, 20 Code Fed. Regs. 856),[6] and has applied it consistently in numerous determinations respecting individual companies which, in their relations and operations, are entirely similar to Duquesne.

Thus, the Board, in a number of cases, has established the rule that warehouse services performed under conditions substantially the same as those presented here constitute services in connection with railroad transportation. *Baltimore Fidelity Warehouse Company, B. R. and P. Warehouse, Inc., Terminal Storage Company of Washington, Lackawanna Terminal Warehouses, Inc., North Western Warehouse Company, Overland Terminal Warehouse*

[6] The provision reads as follows:

"*Service or operation in connection with railroad transportation.* The service rendered or the operation of equipment or facilities by persons or companies owned or controlled by or under common control with a carrier is in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage or handling of property transported by railroad, if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad."

Company, Oklahoma Bonded Warehouse Company, all *supra.*[7] Likewise, in a long line of unanimous Board decisions and General Counsel's opinions, this interpretation has been applied by the Board in determining that many other controlled companies, which are engaged in activities that are not railroad transportation but are an integral part of, or closely related to, a railroad transportation system, are "employers" within the scope of the Act. The decisions cover passenger bus companies (*Monon Transportation Co.*, R.R.B. Law Bull. No. 1, p. 5; *Boston & Maine Transportation Co., id.*, p. 24; *Reading Transportation Co., id.*, p. 29; *Frisco Transportation Company,* L-42-654; *Rio Grande Motor Way, Inc.,* L-42-690); steamship companies (*New England S.S. Co.*, R.R.B. Law Bull. No. 2, p. 23. 476; *Central Vermont Transportation Co.*, B.O. 41-10; *Schuylkill Navigation Co.*, L-42-664); telegraph companies (*Great Northwestern Telegraph Company of Canada,* R.R.B. Law Bull. No. 2, p. 385); tie preserving companies (*Santa Fe Tie & Lumber Co., id.*, p. 276; *Somers Lumber Co.*, L-42-201); hospital associations (*Chesapeake & Ohio Ry. Employees' Hospital Ass'n.*, R.R.B. Law Bull. No. 2, p. 211); railroad office building companies (*Southern Pacific Bldg. Co., id.*, p. 371); railroad equipment manufacturing, repair, and maintenance companies (*Lenoir Car Works, id.*, p. 323; *Oneida Machinery Co., id.*, p. 322; *Hatfield-Campbell Creek Coal Co.*, L-42-186; *St. Andrews Bay Lumber Co., Locomotive & Car Repair Shops,* L-42-125); water supply companies (*Beaver Creek Water Co.*, R.R.B. Law Bull. No. 2, p. 550; *Union Pacific Water Co., id.*, p. 546); railroad dining car companies and eating houses (*Fred Harvey Dining Car Operations, Fred Harvey,* and *Fred Harvey Service, Inc., id.*, pp. 135, 138, 140); barge companies (*Kelley's Creek Barge Line, Inc., id.*, p. 13); railroad land companies (*Rock Island Improvement Co., id.*, p. 266); dock and terminal companies (*Allouez Bay Dock Co., id.*, p. 168; *Long Dock Co., id.*, p. 169; *Boca Grande Terminal Co.*, L-41-654); electric power supply companies (*Erwin Electric Light & Power Co.*, L-41-620); railroad construction companies (*Illinois Dredging & Construction Co.*, L-42-523); ticket agen-

[7] It may be noted that all these warehouse companies have accepted the ruling made as to their status. In fact, the Baltimore Fidelity Warehouse Company, the Lackawanna Terminal Warehouses, Inc., and the B. R. and P. Warehouse, Inc., strongly urged before the Board that they were covered by the Railroad Retirement Act.

cies (*Indianapolis Interurban Joint Ticket Agency*, L-42-373); and mutual benefit associations (*Mutual Beneficial Ass'n of Penn. R.R. Employees, Inc.*, L-40-209;[8] *Chicago, North Shore & Milwaukee R.R. Employees' Mutual Benefit Ass'n.*, L-42-313). It may be noted that in the one instance in which a determination of the Railroad Retirement Board involving this issue has been litigated, the action of the Board has been sustained. *Utah Copper Company* v. 24 *Railroad Retirement Board*, 129 F. (2d) 358. In that case, which was decided on August 11, 1942, the Circuit Court of Appeals for the Tenth Circuit upheld the determination of the Railroad Retirement Board, in its Jurisdictional Docket No. 5, that a carrier affiliated copper company was an "employer," *pro tanto*, by virtue of its operation of shops for repair of the railroad's equipment. The court held that the work done by the individuals in the operation of such shops was "connected with transportation" of passengers and property by railroad, although such work did not constitute railroad transportation or transportation as defined in Section 1(3) of the Interstate Commerce Act. The Supreme Court denied a writ of certiorari in this case on December 7, 1942. *Utah Copper Company* v. *Railroad Retirement Board*, 87 Law. Ed. 172.[9]

[8] This company, like Duquesne, is a Pennsylvania subsidiary and no question has ever been raised as to its coverage even though it does not perform any service constituting "transportation" as defined in Section 1(3) of the Interstate Commerce Act.

[9] In the case of *Marion H. Allen* v. *Ocean Steamship Company of Savannah*, 123 F. (2d) 469 (C.C.A. 5th), a proceeding under the Carriers Taxing Act, it was held that the Ocean Steamship Company is not an "employer" within the meaning of that Act on the ground that it is a carrier by water and not by rail and that it is a part not of the railroad but of the maritime industry. As the Board was informed by the Solicitor General of the United States, the Government has failed to seek certiorari in this case not because of any concurrence on its part in the decision of the case but because the peculiar facts in the record before the Circuit Court made it doubtful that a decision by the Supreme Court would materially affect the coverage situation and, therefore, in the Solicitor's opinion, the case was not of sufficient importance to justify a petition for writ of certiorari. To the extent that the opinion in the *Ocean Steamship Company* case may be considered to conflict with the established interpretation of the carrier affiliate coverage provision as that interpretation is applied to other carrier affiliates, the Board has been constrained not to consider the opinion as a controlling precedent but rather has continued to apply such interpretation as affirmed in the subsequent judicial pronouncement in the *Utah Copper Company* case, in which case certiorari has been denied by the Supreme Court. See, e. g., the Board's unanimous decision in *Somers Lumber Company* and General Counsel's Opinions on *Overland Terminal Warehouse Co.*, *Frisco Transportation Co.*, *Rio Grande Motor Way, Inc.*, *Schuylkill Navigation Co.*, *Hatfield*

25 Conversely, the application of this interpretation has resulted in determinations that many railroad owned or controlled companies are not "employers" because their activities do not constitute an integral part of a railroad transportation system. The decisions cover bridge companies (*Bridge Company*, R.R.B. Law Bull. No. 2, p. 41); independently operated passenger motor bus companies (*Soundview Transportation Company, id.*, p. 111; *Jamieson Stages, Incorporated, id.*, p. 112); cement companies (*Arkansas Portland Cement Company, id.*, p. 120); lumber companies (*Frost Lumber Industries, Incorporated, of Texas, id.*, p. 120; *Puget Sound Pulp and Timber Company, id.*, p. 303; *Southwest Lumber Mills, Incorporated* and *Cady Lumber Corporation, id.*, p. 306); investment companies (*American Contract and Trust Company, id.*, p. 201); real estate companies (*New York State Realty and Terminal Company, id.*, p. 270; *Penn-Haven Realty Company, id.*, p. 376); leather companies (*Union Tanning Company, id.*, p. 272); railroad car manufacturing and vending companies (*Pullman Standard Car Manufacturing Company, id.*, p. 344); chemical companies (*Pennsylvania Salt Manufacturing Company, id.*, p. 363; *Michigan Alkali Company, id.*, p. 364); toll road companies (*Harbor Island Causeway Company, id.*, p. 523); public water supply companies (*Lykens Water Company, id.*, p. 553); hotel companies (*Maple Shade Inn, Pulaski, Virginia, id.*, p. 260); and public electric power supply companies (*Toledo Edison Company*, L-42-187).

On the basis of this interpretation, therefore, the Board, in the determination of the many cases that have come before it, has delimited the scope of carrier subsidiary 26 coverage and has established a workable pattern of inclusion and exclusion for determining whether or not such companies are within the coverage of the Act.

The application of this construction by the Bureau of Internal Revenue in its administration of the Carriers Taxing Act is shown in two published rulings, involving the operation of coordinated motor bus service and the opera-

Campbell Creek Coal Co., St. Andrews Bay Lumber Co., Locomotive & Car Repair Shops, Boco Grande Terminal Co., Illinois Dredging & Construction Co., Erwin Electric Light & Power Co., Indianapolis Interurban Joint Ticket Agency, Chicago, North Shore & Milwaukee R. R. Employees' Mutual Benefit Ass'n., supra, all decided after the Circuit Court's decision in the *Ocean Steamship Company* case.

tion of hospital and related services (*O. Transportion Co.*, C.T. 12, Cum. Bull. 1938-2, p. 345; *M. Hospital Association*, C.T. 16, Cum. Bull. 1939-1, p. 317), and in a number of unpublished rulings. Many of the cases decided by the Railroad Retirement Board have not also called for determinations by the Commissioner of Internal Revenue since the companies, following the Board's determinations, have regularly paid the self-assessing taxes required by the Taxing Act.

This contemporaneous and continued construction of the carrier affiliate coverage provisions by the Railroad Retirement Board and the Bureau of Internal Revenue has received legislative sanction. Following a determination by the Railroad Retirement Board in *Union Pacific Coal Company*, May 31, 1940, B.O. 40-299, that the activities of carrier subsidiaries engaged in mining coal for the purpose of servicing railroad operations through supplying locomotive fuel for the railroad system of the parent carrier constituted the performance of a service in connection with railroad transportation, legislation was adopted to exclude specifically from the coverage of the statutes carrier subsidiaries engaged in mining and supplying coal to railroads. Act of August 13, 1940, C. 664, 54 Stat. 785.

27 It may be properly inferred that if the consistent rulings of the Board concerning the various companies whose activities related to railroad transportation but were not a part of such transportation, or "transportation" as defined in Section 1(3) of the Interstate Commerce Act, were not deemed by Congress to be correct, the Acts would have been amended to overturn them. *Massachusetts Mutual Life Ins. Co.* v. *United States*, 288 U.S. 269, 273. Congress, however, has never excluded any other types of carrier affiliates, although the various rulings of the Board construing the carrier affiliate coverage provisions were brought to the attention of Congress in the course of the passage of the coal mining amendment.[10]

[10] The report of the Senate Committee on Interstate Commerce accompanying the amendment stated (Report of the Senate Committee on Interstate Commerce on S. 4070, S. Rep. 1744, 76th Cong., 3rd Sess., p. 2):

"Certain carriers by railroad own and operate coal mines directly with their own employees. In addition, another and larger group of carriers have wholly owned subsidiaries engaged in mining coal for the purpose of servicing railroad operations through supplying locomotive fuel for the railroad system of the parent carrier. After investigation of these activities the general counsel of the Railroad

28 The weight to be attached to a contemporaneous and continued administrative construction in the interpretation of a statute, particularly where there is the implication of legislative sanction, is of course well settled. E. g., *Koshland* v. *Helvering*, 298 U.S. 441, 445; *United States* v. *Madigan*, 300 U.S. 500, 505; *Massachusetts Mutual Life Ins. Co.* v. *United States*, 288 U.S. 269, 273. Here there
29 is double importance to be attached to the consideration that the interpretation should not be disturbed unless clearly wrong, for the problem is concerned with the administration of a social insurance system for a whole nationwide industry. It must be recognized that the administrative process, lending itself to the continuous specialized consideration of all types of individual cases, is particularly fitted to mark out the boundaries of that sys-

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Retirement Board advised that in his opinion these activities constituted the performance of a service in connection with the transportation of persons and property by railroad and that, consequently, these companies were employers, as the term "employer" is defined in the Railroad Retirement Acts and the Railroad Unemployment Insurance Act, . . .

"The companies affected disagreed and requested a hearing before the Board. This request was granted, elaborate evidence was presented before an examiner, and arguments were made before the Board. Upon the consideration of the evidence and argument, the Board found itself compelled by the statutory language to conclude that these companies are legally subject to the Railroad Retirement Acts and the Railroad Unemployment Insurance Act. The opinion of the Board with respect to the status of Union Pacific Coal Co., copy of which has been forwarded to the committee, shows that the conclusion was dictated not by any feeling of the Board that such coal mining operations ought, as a matter of policy, to be covered by the acts administered by the Board, but rather by consistent application of the interpretation of the acts promulgated in rulings that other carrier affiliates engaged in such activities as manufacturing and supplying equipment parts, furnishing water for locomotives, furnishing auxiliary or substitute bus or water transportation, furnishing dining facilities, treating ties, transmitting telegraphic communications, providing hospital and medical facilities, and providing maintenance of buildings, are employers subject to the act. The Board, as well as railroad employers, railroad employees, the mine workers, the Federal Security Administrator and State unemployment compensation administrations, believes that as a matter of policy such coal-mining activities, whether conducted directly by carriers or by subsidiaries of carriers, should for purposes of a social-insurance program and for purposes of labor relations be covered by the system of laws applicable to coal mining generally rather than the system of laws applicable to the railroad industry. The committee believes such a policy to be sound and, accordingly, recommends the enactment of S. 4070 so as to exclude coal-mining operations from the acts covering the railroad industry without disturbing or prejudicing the application of those acts to other railroad affiliates. Section 6 of the bill makes this purpose clear."

tem with the ultimate precision and certainty that the term "insurance" implies.

This result has now been substantially achieved in the light of six years' experience with the subject by the Railroad Retirement Board and, in the light of the numerous precedents which it has established over that period of time. On the basis of its rulings, and the rulings of the Bureau of Internal Revenue, large sums of taxes have regularly been paid by many taxpayers under the Carriers Taxing Act, and hundreds of participants are receiving, and are entitled for life to continue to receive, thousands of dollars each month, under annuity obligations now in force.

The gravamen of the argument for restricting the scope of the carrier affiliate coverage provision of the Railroad Retirement Act to services which constitute "transportation" as defined in Section 1(3) of the Interstate Commerce Act is the fact that in the course of the legislative hearings on the bills which became the Railway Labor Act of 1934, references were made in the committee hearings to the definition of "transportation" in Section 1(3) of the Interstate Commerce Act, and that, in connection with the enactment of the Railroad Retirement Act of 1937, witnesses at the committee hearings referred to the coverage in terms of "railroad transportation." We believe it sufficient to state, *first*, that none of these statements can definitely be said to have been directed specifically to the proposition that the scope of Section 1(a) is *restricted* in the manner suggested, but that, in terms of the particular issue here before us, they are equivocal in character, constituting at best rough, rule-of-thumb, generalizations as to the coverage of these acts, and *secondly*, that they represent no more than the hypothetical opinions of committee witnesses, derived by inference from testimony susceptible of conflicting inferences. There is ample authority that material of this character may not properly be used as an aid to construction. *Commission* v. *Broadcasting System*, 311 U.S. 132, 136, 137; *McCaughn* v. *Hershey Chocolate Co.*, 283 U.S. 488, 493-494.[11]

[11] It should be noted that the question of the weight to be attached to this material was considered in detail by the Railroad Retirement Board in its opinions dealing with this question in *Lenoir Car Works* (R. R. B. Law Bull. No. 2, p. 323), and *Union Pacific Coal Company*, *supra*. These

Moreover, whatever significance might otherwise be attached to this material, is dissipated by the evidence which directly and affirmatively indicates that, in fact, Section 1(a) was not intended to be restricted to companies
31 engaged in "transportation" within the definition of Section 1(3) of the Interstate Commerce Act. This is shown by the very testimony at the Congressional hearings, upon which the contention is based, by the committee reports, by a comparison and analysis of the language of the sections themselves, and by a comparison of the purposes of the Interstate Commerce Act on the one hand and the Railroad Retirement Act on the other.

The testimony in question is principally that of Mr. Eastman, Coordinator of Transportation, who was draftsman of the Railway Labor Act of 1934, and Mr. Harrison, who appeared at Congressional committee hearings on the Railroad Retirement Act as Chairman of the Railway Labor Executives Association. The significant part of Mr. Eastman's testimony is the clear expression of his intention that the maintenance and repair of way and equipment were covered.[12] But such activity is not within the definition of Section 1(3) of the Interstate Commerce Act. It is evident that such services could not be included under Section 1(a), if at the same time it was intended to
32 limit Section 1(a) to services covered by Section 1(3).

Similarly, the effect of any reference to coverage made by Mr. Harrison in terms of "railroad transportation" is removed by his express reference to railroad subsidiaries handling "mechanical work" and "accounting and collecting" for railroads as covered by the Act. These activities,

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determinations in which the arguments based on this material were rejected, were made prior to Congress' adoption of the coal mine exception to Section 1(a) of the Act, and, as noted above, the *Union Pacific Coal Company* opinion was forwarded to the Senate Interstate Commerce Committee in connection with their consideration of the amendment (*supra*, p. 17).

[12] Mr. Eastman, in explaining the definition as initially drafted, which made reference to the Interstate Commerce Act, indicated unequivocally an intention that maintenance of equipment, way, and structures, even though not performed by the carrier, should be covered. See Hearings before the Senate Committee on Interstate Commerce on S. 3266, 73d. Cong., 2d Sess. (1934), pp. 10-11. He then commented:

"I may say that in reading that over last night I am not sure the language does cover all companies to which railroads on occasion have contracted out their maintenance work, and it perhaps should be examined rather carefully from that point of view."

Subsequently he presented the amendment which was incorporated into the bill as enacted.

of course, are not services which are performed upon goods in the course of their transportation by railroad, nor do they constitute transportation as defined in Section 1(3) of the Interstate Commerce Act. Clear implication of the intention not to restrict the carrier affiliate coverage provision to railroad transportation in the ordinary sense or as defined in Section 1(3) of the Interstate Commerce Act is also found in the committee reports on the Railroad Retirement and Carriers Taxing Acts which specifically include in the coverage non-casual railroad construction and repair operations. S. Rep. No. 697, 75th Cong., 1st Sess., p. 7; S. Rep. No. 818, 75th Cong., 1st Sess., p. 4; H. Rep. No. 1071, 75th Cong., 1st Sess., p. 5.

Moreover, it appears on the face of the statute itself that the carrier affiliate provisions of Section 1(a) cover activities beyond those defined as "transportation" within the definition of Section 1(3) of the Interstate Commerce Act. Section 1(3) provides as follows:

> "* * * The term 'transportation' as used in this chapter shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and *all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigerator icing, storage, and handling of property transported.*" (Italics supplied.)

33 This is to be contrasted with the definition of Section 1(a) which includes within the term "employer" not only any carrier affiliate which performs "any service * * * in connection with * * * the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad" (the services which are enumerated in Section 1(3) of the Interstate Commerce Act) *but also* any carrier affiliate which performs "any service * * * in connection with the transportation of passengers or property by railroad." And in accordance with well-established rules of statutory construction some meaning must be given to this additional clause. *Ex parte Public Bank*, 278 U.S. 101, 104; *Ginsberg & Sons* v. *Popkin*, 285 U.S. 204, 208; *McDonald* v. *Thompson*, 305 U.S. 263, 266. No effective meaning is attributed to the clause if it is regarded merely as a general state-

ment explained by the specific enumeration of services which follow, for the clause specifically embraces services in connection with the transportation of both *passengers* and property whereas the specifically enumerated services of receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling relate solely to *property*.

Apart from that fact, however, the disjunctive "or" between the general provision referring to the operation of "any equipment or facility" or the performance of "any service * * * in connection with * * * transportation * * *," on the one hand, and the enumeration of activities, "receipt, delivery, etc.," on the other, makes it clear that the latter enumeration is not merely explanatory of, or in apposition to, the preceding general provision, but is intended to specify certain additional services intended
34 to be covered. As ordinarily used, the word "or" must be construed as a disjunctive expressing an alternative or giving a choice of one among two or more things. *Danciger* v. *Cooley*, 248 U.S. 319, 326-327; *N. Y. Central Securities Co.* v. *United States*, 287 U.S. 12, 23; *Ohio Fuel Supply Co.* v. *Paxton*, 11 F. (2d) 740 (C.C.A. 6th); *Smith* v. *Farley*, 155 App. Div. 813, 140 N. Y. Supp. 990.

The conclusion that the carrier affiliate coverage of Section 1(a) is not restricted to affiliates engaged in "transportation" as that term is defined in Section 1(3) of the Interstate Commerce Act is confirmed by comparison of the purposes of the Railroad Retirement Act with the purposes of Part I of the Interstate Commerce Act. See *South Chicago Company* v. *Bassett*, 309 U.S. 251, 259-260; *Ozawa* v. *United States*, 260 U.S. 178, 194; *Detroit Trust Company* v. *The Barlum*, 393 U.S. 21, 38. Section 1(3) is concerned with those activities in which shippers are directly interested. Consequently, certain activities which are intimately related to or connected with railroad transportation, such as railroad maintenance of way, structures, and equipment, are not brought under the Interstate Commerce Commission's jurisdiction by the provisions of Section 1(3) of the Interstate Commerce Act, since they are services performed in connection with the carrier's own operations and are, of course, neither offered to the public nor required to be offered.

The Railroad Retirement Act, however, was intended to

establish a retirement system for employees in all phases of railroad operations. Section 1(a) includes within the
35 term "employer" not only carriers by railroad, express companies, and sleeping-car companies subject to Part I of the Interstate Commerce Act (which constitute the primary coverage of the Act) and the carrier affiliates (which we are here discussing), but also railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations controlled and maintained by two or more "employers" as aforesaid and performing services in connection with or incidental to railroad transportation; national railway labor associations and certain of their committees, and their insurance departments, local lodges, and divisions. It is therefore evident that the Congressional purpose was to extend the coverage of the Act well beyond the scope of the provisions of the Interstate Commerce Act. The inclusion of the type of coverage contemplated by the carrier affiliate coverage provision was manifestly prompted by the consideration that certain operations and services intimately and integrally related to railroad transportation and whose performance is effectively controlled by carriers are engaged in by companies other than railroads, and it was designed to bring such operations and services within the coverage of the Act despite the existence of arrangements, contractual or otherwise, whereby entities separate from any carrier conduct those operations. These operations and services may not only be rendered in connection with goods in process of transportation, such as receipt, delivery, transfer in
36 transit, etc., which services are within the provisions of Section 1(3) of the Interstate Commerce Act, but may also consist of such other services as maintenance of way structures, and equipment, which make possible or facilitate such transportation.

Upon consideration of all cases and arguments submitted by counsel for Duquesne and the Brotherhood of Railway Clerks, it is found on the facts of this case that services performed by Duquesne are performed in connection with the transportation of property by railroad and the receipt, delivery, transfer in transit, storage, and handling of property transported by railroad within the meaning of those terms as they are defined in Section 1(a) of the

Railroad Retirement Act. It is held, therefore, there being no question that Pennsylvania owns Duquesne, that Duquesne is and has been an "employer" within the meaning of the Railroad Retirement Act.

Decided February 11, 1943.

MURRAY W. LATIMER
Murray W. Latimer, Chairman

L. M. EDDY
L. M. Eddy, Member

37 MEMORANDUM

Chicago, Illinois
February 19, 1943

To The Board
Mary B. Linkins, Secretary
From M. R. Reed
Subject Duquesne Warehouse Company
Jurisdictional Docket No. 18

For the record and in support of my vote against and dissent from the majority findings in the matter of Duquesne Warehouse Company, Jurisdictional Docket No. 18, expressed in Board Order 43-93, February 11, 1943, I am filing herewith in writing my dissenting opinion.

M R REED

Enclosure

38 RAILROAD RETIREMENT BOARD

In the Matter of Duquesne Warehouse Company } Jurisdictional Docket No. 18

MR. REED, BOARD MEMBER, DISSENTING

A careful review and study of the record established in this case including all submissions, briefs, arguments and hearings, together with an intimate personal knowledge of the activities, operations and physical layout of Duquesne, compels me to disagree with and dissent from the majority findings, conclusions and Order of the Board in this matter. To assist in a better understanding of the basis of this disagreement, I recount here a finding of facts.

The Warehouse Company will be referred to as Duquesne, and The Pennsylvania Railroad Company as the Railroad.

39 FINDINGS OF FACT

1. Duquesne is a corporation of the Commonwealth of Pennsylvania. Its business as stated in its charter is "for the purpose of conducting a storage and warehouse business." It does a commercial warehouse business in Pittsburgh, Pa. at two locations—one in Pittsburgh proper and the other at East Liberty in Pittsburgh. It conducts no services in any way relating to passengers. It issues warehouse receipts pursuant to the Warehouse Receipts Act of Pennsylvania—Act of 11 March 1909, P.L. 19. Its stock is owned by the Railroad.

2. Duquesne's operations are confined to two commercial warehouses—one in Pittsburgh proper and the other at East Liberty in Pittsburgh. The two warehouses are owned by the Railroad and leased by it to Duquesne, except that a portion of the space on the ground floor of each warehouse is retained by the Railroad and used by it and officially designated in its tariffs as its freight stations for the general receipt and delivery of freight. The Railroad maintains an agency force at each station. These stations are fully equipped with tracks and other facilities for the receipt, delivery and handling of inbound and outbound freight, both carlot and less; and such service is rendered to the public generally. The operations of each are altogether separate from the operations of Duquesne.

3. Each warehouse has a railroad private siding where delivery is made by the Railroad in carlots to Duquesne. Placement on the siding by the Railroad is complete
40 delivery to Duquesne. Transportation by railroad has then been completed. The owner unloads the cars. On outbound carlot shipments the Railroad places the empty cars on the siding and the owner loads. The Railroad does not come into possession of the property until loading has been completed, shipping instructions have been furnished to the Railroad, and the Railroad has issued its bill of lading in acceptance of the freight. On inbound delivery and outbound shipment of less than carload freight such delivery and acceptance are made and given by the

agency of the Railroad at the warehouses. Inbound the owner takes the freight from the Railroad station platform and receipts to the Railroad accordingly. Outbound the owner delivers the freight to the Railroad at the railroad station platform, and the Railroad accepts and issues its bill of lading covering. Transportation by railroad inbound in carlots ends on siding delivery; and on outbound begins upon completion of loading by shipper, furnishing to the Railroad of shipping instructions, and the issuance by the Railroad of its bill of lading. On less than carlot shipments transportation by railroad ends on delivery to the owner at the platform of the station agency, and begins on receipt from the owner at the same point.

4. All carlot shipments delivered to Duquesne by the Railroad and shipped out from Duquesne's warehouses over the railroad are carried by the Railroad at carload rates. As is customary generally with carload freight, and as required by the governing tariff of the Railroad, the owner unloads on inbound and loads on outbound. The requiring rule is No. 27, Section 1, of the governing tariff, which is Consolidated Freight Classification presently numbered 13, and reading as follows, (there being no exceptions as covered in the rule);

41 "LOADING OR UNLOADING.

"Owners are required to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by rail carriers, carried at CL ratings or rates, except where tariff of carrier at point of origin or destination or stopover station (as the case may be) provides for loading or unloading of CL freight by carrier."

5. After delivery of the freight by the Railroad to Duquesne, both carlot and less, the possession is that of Duquesne and the property is under the exclusive control and direction of Duquesne. A like situation prevails on outbound goods until delivery by Duquesne to the Railroad. During the control and possession by Duquesne, liability, if any, for loss, damage or injury to the property is that of Duquesne. Responsibility of the Railroad as to carlot freight inbound ceases upon delivery on the siding to Duquesne, and on outbound does not arise until receipt from Duquesne of the property loaded into the car and the issu-

ance of the bill of lading. The same applies on less than carload freight at the time of delivery by the Railroad to Duquesne on inbound shipments, and upon receipt from Duquesne of outbound shipments. All services accorded the property by Duquesne, such as loading, unloading, storing, ventilating, drying, moistening, packaging, assembling and distributing, are performed by Duquesne at the direction of the owner; under arrangements made direct by the owner with Duquesne; and charges for such services are made by Duquesne to the owner direct and paid by the owner direct to Duquesne.

6. At its warehouse in Pittsburgh proper, Duquesne conducts a general commercial warehousing business. That business comes to it both by rail and truck, and goes out likewise. About 40% moves out by truck. Carlot shipments by rail inbound are consigned to the owners care of Duquesne. Unloading is performed by Duquesne for the owners. Outbound, carlot loading is performed by Duquesne for the owners. The owners are the shippers and so appear on the bills of lading. In the case of less than carlot shipments, Duquesne takes delivery for the owners at the platform of the railroad station agency, and on outbound shipments delivers for the owners to the Railroad at the same point.

7. At its East Liberty warehouse the only commodity handled by Duquesne is sugar in carlots. The sugar is packaged freight, originates at the eastern seaboard, and reaches Pittsburgh by rail transportation. It is consigned to the shipping sugar company care of Duquesne. Duquesne is used by the owner for storage, warehouse handling and subsequent distribution. Delivery inbound is made by the Railroad, and shipment outbound made by the owner as described in previous findings.

8. The tariff of the Railroad under which sugar and other carlot shipments of the commodities named in the tariff are transported by the Railroad carries a transit provision. That is, sugar and the commodities named in the tariff are transported by the Railroad to Pittsburgh and there delivered to the consignees at the carload rates local to Pittsburgh. If and when subsequently shipped out over the same railroad, the sugar is entitled to the through rate from the initial point of shipment to ultimate destina-

tion. The governing tariff on the Railroad, however, contains this express provision:

43 "While the shipments are stored in transit under these rules their custody and possession as between carrier and the consignee or owner, shall be that of the consignee or owner."

9. The transit provision in the tariff of the Railroad is not particular to any one consignee. It is restricted to commodities and locations, but is open to all receivers and shippers of named commodities at the named points. For instance, transit on sugar is accorded by the Railroad also at Chicago, Detroit, Fort Wayne and Indianapolis; on lumber at Cincinnati, Fort Wayne and Toledo; on dairy products at Cincinnati, Cleveland, Detroit and Indianapolis; on grain at Chicago, Cincinnati, Pittsburgh and St. Louis; on iron and steel at Ambridge, Pa., Chicago and Logansport, Indiana. In addition, at East Liberty the transit provision is applicable also on canned food stuffs.

10. This same sugar arrangement at Pittsburgh has long been availed of by another large sugar refining company located on the eastern seaboard. It makes carlot shipments of sugar to Pittsburgh, consigning the same to another warehouse company. That company has a warehouse located on the line of the Railroad at Pittsburgh, connected with which is a private siding. The sugar of that refinery is shipped from the eastern seaboard to the warehouse company over the line of the Railroad, delivered by the Railroad to the warehouse company on its private siding, handled by the warehouse company while in its possession, and later distributed by the warehouse for the owner at Pittsburgh and throughout surrounding territory. Previous to 1942 much of this sugar was received by that warehouse company from the Railroad, handled by the warehouse

44 company and then shipped out by the warehouse company over the railroad under the transit arrangement in precisely the same way as the sugar of another refinery is handled by Duquesne at its East Liberty warehouse. This arrangement terminated with the year 1941 because of contractual arrangements between the warehouse company and the refining company.

11. During a limited period, Duquesne operated a warehouse at Erie, Pa., where newsprint paper in carlots was stored for the Pittsburgh Press. The facilities were in

use August 1937 to 15 May 1938. That was occasioned by an emergency with respect to price conditions on newsprint paper. The paper was delivered inbound by the Railroad to Duquesne on private siding of Duquesne, and on outbound movement was received by the Railroad from Duquesne and transported to Pittsburgh where delivery was made by the railroad to the newspaper. The services of loading, unloading and handling by Duquesne were similar to those with respect to sugar at East Liberty. As of May 1, 1941, the lease of those facilities was terminated and Duquesne now performs no service whatever at Erie, Pa., and is not in a position to do so.

12. Duquesne files no tariffs with the Interstate Commerce Commission or with any public utility commission of any state. Nor is it a party to any tariff, either state or federal, of any common carrier subject to the provisions of Part I of the Interstate Commerce Act.

13. Duquesne sublets parts of its warehouse building at Pittsburgh proper to tenants who conduct their business there. They are chiefly manufacturing concerns or representatives of manufacturers. Duquesne has nothing to do with any shipments delivered to them by the railroad or made by them over the railroad. The Railroad delivers freight to them and receives freight from them in the same manner as freight is delivered to Duquesne by the Railroad and received by the Railroad from Duquesne.

14. Gross revenues of Duquesne for the years 1936-1938 were as follows:

Year	Storage and handling of freight under transit provision	Storage and handling of other freight	Sale of Salvaged freight	Subleasing of space to tenants
1936	$59,570.40	$63,011.60	$ 8,599.00	$32,732.00
1937	30,239.93	91,545.99	11,409.00	24,967.00
1938	29,836.01	73,702.99	8,881.86	16,035.17

Of the space in the two warehouses at East Liberty and Pittsburgh proper, the approximate percentage of space devoted to operations with respect to freight coming under the transit arrangement was 30% in 1936, 12.5% in 1937, 12.5% in 1938. Total space was used at Erie for the limited period during which that warehouse was in operation. Of the employees of Duquesne engaged in the services

with respect to freight coming under the transit provision, the approximate number of employees was 28 in 1936, 14 in 1937, and 14 in 1938. The approximate number of other employees of Duquesne engaged in general commercial storage in 1936 were 30, in 1937—42, in 1938—42; engaged in the handling of damaged and refused merchandise, 3 in 1936, 1937 and 1938; engaged in the subleasing of space to tenants, 4 in the year 1936, 1937 and 1938.

15. At its warehouse in Pittsburgh proper, Duquesne receives from the Railroad over freight and damaged freight which is unclaimed or refused. Upon delivery by the Railroad, Duquesne takes entire possession of the freight, reconditions it where necessary and possible, and sells it at private sale. In case the property proves to be worthless, Duquesne disposes of it as determined by its judgment. Duquesne has never made delivery of any freight for the Railroad. The present contract, effective 2, January 1941, contains no provision for such delivery, nor has Duquesne at the direction of the Railroad ever disposed of any freight which has become worthless. For its services Duquesne charges the Railroad 10% of the gross proceeds of sale, with deduction for any necessary expense in reconditioning and handling, and remits the balance to the Railroad. Should the gross proceeds realized at any sale not equal the expenses of Duquesne in handling the freight, plus the 10% commission, Duquesne is credited with the difference. All of the services of Duquesne with respect to this property are altogether after the freight has finished transportation in railroad service, and are separate and independent transactions.

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16. Employees of Duquesne are on the pay roll of that company only, and are paid solely out of its funds. They are hired by Duquesne and may be discharged by it only. They come only under the supervision, direction and authority of a Superintendent, who has full and unrestricted authority to conduct a commercial warehouse business in accordance with the charter of the company. These employees are not accorded free transportation by the Railroad and never have been. They are not entitled to become members of The Pennsylvania Railroad Voluntary Relief Department or The Pennsylvania Railroad Employes Provident and Loan Association, organizations in which membership is restricted as to the Relief Department

to employees and former employees of the Railroad, and as to the Provident and Loan Association to employees
47 of the Railroad. They have never been regarded by the Railroad as its employees or by Duquesne as other than its employees.

17. Duquesne pays taxes under the Federal Security Act, Titles VIII and IX, now numbered Sections 1410 and 1600 of the Internal Revenue Code, respectively. It collects from its employees 1% of their wages under Section 1400 of the Internal Revenue Code. It meets the requirements of the Fair Labor Standards Act of 1938. The hours of labor of its employees are regulated accordingly. It is subject to the Pennsylvania Workmen's Compensation Act of 1915, P.L. of 1915, 736, as amended, and pursuant to the terms of that Act provides the required insurance for the payment of compensation to its employees.

18. Duquesne is a member of the American Warehousemen's Association, Merchandise Division, with offices at 222 West Adams Street, Chicago, Illinois, and has for many years been such a member. This is a national organization of merchandise warehousemen. Pursuant to Title I of the National Industrial Recovery Act, 48 Stat. 195, a Code of Fair Competition for the Merchandise Warehousing Trade was approved on behalf of the President of the United States on January 27, 1934, and by its terms became effective on February 10, 1934, and continued until May 27, 1935, when it was terminated as the result of a decision of the United States Supreme Court. This Code was No. 232. On January 31, 1934, Duquesne applied for a Certificate of Participation under the Code. On February 13, 1934, it was assigned Certificate No. 34-135, which was in the form of a display card featuring the NRA Code "Blue Eagle" and bearing the serial number assigned to the member of the trade to which it was issued. The participation of Duquesne in the Code of Fair Competition
48 for the Merchandise Warehousing Trade continued throughout the duration of the Code.

19. In the valuation of property of the Railroad by the Interstate Commerce Commission pursuant to Sec. 19a of Part I of the Interstate Commerce Act—22 Valuation Reports, entire volume—these warehouses are not classified as properties of the Railroad used for common carrier purposes.

20. Since August 28, 1935, Duquesne has not been engaged in the non-casual operation of equipment or facilities or the performance of non-casual service, other than trucking service, in connection with the transportation of property by railroad or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

Conclusions of Law

Duquesne does not now, nor has it at any time operated any equipment or facility, or performed any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad; and is not now, and has not at any time been an "employer" within the meaning of Section 1(a) of the Railroad Retirement Act.

Discussion

It does not seem necessary that I cite in detail all of the various arguments, opinions, precedent cases and other material developed by the parties at interest in this
49 case. Reviewing previous decisions of the Board, I find no case similar in all respects to the present one. The contention of Counsel for Duquesne that the Baltimore Fidelity case is distinguishable is well taken. It cannot be ignored that Baltimore Fidelity acted as agent for its controlling carrier in the active solicitation of freight, and that its employees were considered to be carrier employees, granted carrier employee privileges and were carried on carrier pay rolls. While these factors in and of themselves may not be determinative of coverage they contribute to the total from which coverage is concluded.

Conscientious consideration of all the facts indicates that the services performed by Duquesne are in commercial storage only, and are not services in connection with the transportation of property by railroad. The services rendered are not even incidental to Pennsylvania Railroad

transportation. Duquesne renders a commercial storage service to the owners of goods. It acts in the owner's name, delivery to Duquesne is delivery to the owner. Delivery to Pennsylvania by Duquesne is delivery from the owner. The owners may deal with the goods as they choose while in the possession of Duquesne. The services performed by Duquesne occur either before transportation has begun or after transportation has ceased.

The record establishes that the storage-in-transit provisions published in Pennsylvania's tariffs do not result in a storage in transit by the Railroad. There is no holding out on the part of the carrier to perform such service. Pennsylvania's published tariffs extend only the right to through rates as to certain commodities transported over its lines when those commodities are accorded off-line storage in transit by the owner. The actual handling in storage service is rendered by Duquesne for account of the owner of the goods. There is no contract as between Pennsylvania and the owner or shipper for warehouse services. The governing tariff of the Railroad expressly provides that during such storage the custody and possession of the property shall be that of the consignee or owner. Duquesne's activities are again those of a purely commercial warehouse.

Similarly the facts substantiate the conclusion that Duquesne's loading and unloading services do not constitute a service in connection with transportation. In this case they are not a common-carrier obligation. The governing tariff makes it clear that the carrier has not held itself out to render the services and in fact does not render such service either directly or indirectly inasmuch as Duquesne acts for the owner.

With respect to damaged, refused, unclaimed and overfreight Duquesne takes complete possession upon delivery to it by Pennsylvania. For its services Duquesne charges the railroad ten per cent of the gross proceeds of the sale with deductions for necessary expense for reconditioning and handling. The activities engaged in here may occur as a result of transportation but do not constitute a service in connection with transportation. Freight of this class has ceased to be a part of the flow of goods. This service is no link in the chain of transportation but is an enterprise, proper for a commercial warehouse.

In our Annual Report for the year 1938, Chapter X, page 142, a general statement of the law with respect to carrier affiliates is made as follows:

"Storage of property received for a carrier and awaiting transportation by the carrier, or awaiting delivery by the carrier following transportation, is an employer service; but performance of the usual commercial storage and warehouse business is not."

The activities of Duquesne are clearly outside the scope of this general statement. Throughout the record it is plain that Duquesne does not store or receive goods for a carrier but stores and receives goods for the owners as their agent. Likewise goods delivered to Duquesne are not awaiting delivery following transportation. Delivery has been accomplished and transportation has ceased upon receipt by Duquesne. As to carload freight, delivery is accomplished upon the placing by the Railroad of the car upon the private siding of Duquesne. This is in accordance with long established practice.

The arguments against coverage advanced by Counsel for Duquesne, I believe, are convincing and well founded on the facts and I agree that Duquesne is not a covered employer. The record, when analyzed carefully and completely reveals, not a company rendering services in connection with transportation as a part of the railroad industry but rather a commercial warehouse. This commercial warehouse is not directly related, functionally and economically, to the performance of Pennsylvania's transportation obligations but, in fact, has only such relation to transportation as is common to the commercial warehouse business.

It is well known legislative history that the Retirement Act was framed in agreement between management and labor. A study of that history leaves no doubt that the intent of the parties was to cover those employers who are engaged in the transportation of property while the property is in the possession of the Railroad. The particular words "in connection with" found their way in the Retirement Act from the Interstate Commerce Act through the Railway Labor Act. In the Commerce Act they occur in Secs. 1(3)(a); 1(5); 6(7); and 15(13). And in placing these words in the Retirement Act the limiting words "by railroad", not necessary in the Commerce Act,

were carefully added. With respect to associations, bureaus, agencies or organizations controlled and maintained wholly or principally by two or more employers, the words are "in connection with or incidental to railroad transportation". The difference in limitation is not unimportant.

The words "in connection with" when used in relation to railroad transportation have been defined by the Interstate Commerce Commission and by the courts, and in every instance these words have been held to cover services which are a part of the railroad transportation itself. In the case of *N. Y. C. & H. R. R. Co. v. General Electric Co.*, 146 N. Y. Supp. 322, the words were "renders any service connected with such transportation". The court said this:

> "* * * I understand that the defendant urges that the wording of section 15, 'if the owner of property transported under this act directly or indirectly renders any service connected with such transportation or furnishes any instrumentality used therein,' etc., includes this service in question; that the service for which the owner may receive compensation from the carrier under this provision need not be a part of the transportation itself, but only connected with it. I conclude, however, that the expression 'connected with' is a synonym of 'a part of'; it does not mean something, in addition to transportation, that touches, or is attached to, transportation. A common carrier of prop-
> 53 erty cannot include in its charge for transportation an item which is not a part of transportation, and it was not intended by said provision to require the carrier to pay for a service which it was not bound as a carrier of property to render and for which it could not charge. * * *" p. 327.

Affirmed 219 N. Y. 227. Certiorari denied, 243 U.S. 636.

I understand it to be an established rule of statutory construction as laid down by the Courts that in reaching an interpretation of a statute every effort is to be made to give some effect to all the language used. Also, it is not to be assumed that Congress has included in any of its enactments language that is either meaningless or superfluous. Now, it seems to me, that if any effect is to be given to that additional description following the words "in connection with the transportation of passengers or property

by railroad", we must reach the conclusion, not only that the word "transportation" is used in this Act in its accustomed and well understood sense of an actual carriage of persons or property, but also that the phrase "in connection with the transportation of passengers or property by railroad" means, having to do directly with such transportation by railroad. Not to give that effect to this added clause is to ignore it altogether.

CONCLUSION

It is my opinion and I conclude that Duquesne conducts a commercial warehouse business and has not been, at least since August 28, 1935, an employer within the meaning of Section 1(a) of the Railroad Retirement Act.

54

This form is to be used only by the secretary of the Board or as otherwise specifically directed by the board.	Form No. G-21 United States of America Railroad Retirement Board Transcript of Board Order's	Transcript No. Special Page 1 of 1 Page Date Transcript Released

I certify that the following is a true and correct transcript of Board Order numbered 43-93 transcribed from the record of proceedings of February 11, 1943

LORINE M. FISHER
Acting for the Secretary of the Board

B.O. 43-93

Rendering decision in the Matter of Duquesne Warehouse Company, Jurisdictional Docket No. 18

The Board hereby renders the decision set forth in the Decision of the Board, in the Matter of Duquesne Warehouse Company, Jurisdictional Docket No. 18, after consideration of the record and arguments therein.

55 DUQUESNE WAREHOUSE COMPANY

Philadelphia, Pa.
February 17, 1939.

Mr. David B. Schreiber
Assistant General Counsel
Railroad Retirement Board
Washington, D. C.
Dear Sir:

Agreeable to your request, we are forwarding herewith Questionnaire-Form LQ-2 (Revised) for this Company.

Very truly yours

F. J. Fell, Jr.
Fell
Comptroller.

Enclosure.

56 DUQUESNE WAREHOUSE CO.

Answers to Railroad Retirement Board
Questionnaire Form LQ-2 (revised).

QUESTION 1.

State:

(a) Name of respondent.
(b) Address of respondent's principal office.
(c) Name of officer authorized to answer questions regarding the status of respondent under the Railroad Retirement Act.

ANSWER

(a) Duquesne Warehouse Company.
(b) 1617 Pennsylvania Blvd., Philadelphia, Pennsylvania.
(c) E. W. Smith, President, Pennsylvania Station, Pittsburgh, Pa.

QUESTION 2

(a) State date of incorporation of respondent.
(b) Under laws of what state or territory was respondent organized?
(c) If a consolidated, merging or reorganized company, name all constituent merged or predecessor companies in chronological order, giving the dates of

each consolidation, merging, or reorganization; also names of companies leased, or used under contract showing dates.

(d) If respondent has at any time operated under any other name or names than those stated above, give such names and dates operated thereunder.

ANSWER

(a) August 1, 1906.
(b) Commonwealth of Pennsylvania.
(c) Not a consolidated, merging or reorganized company; no companies leased nor used under contract.
(d) Respondent has never operated under any other name.

QUESTION 3

(a) Respondent is requested to attach a copy of its organic document; (namely, charter, constitution, articles of association, etc.), together with amendments and by-laws.

(b) State fully the purpose of incorporation or organization.

(c) State whether or not the respondent has always adhered to its original purposes. If not, explain fully the changes which have taken place and dates thereof.

ANSWER

(a) Copies of the following documents are attached:
Articles of Association—Exhibit 1 (A)
By-Laws —Exhibit 2

57 (b) The conducting and carrying on of the business of storage, warehousing and handling of goods, wares and merchandise and other property intended for transportation, distribution, storage, sale or otherwise.

(c) Respondent has always adhered to its original purposes.

QUESTION 4

(a) Has respondent been at any time subject to the control, direct or indirect, of any express company, sleeping-car company, or carrier by railroad? If so, state:
(1) The name of the controlling company or com-

panies (whether a corporation, individual, or partnership) giving dates of such control.

(2) The form of control, sole or joint.

(3) Whether control was direct or indirect. If indirect, the name of the intermediary through which control was established.

(4) The manner in which control was established and the extent of such control.

(b) Has the respondent been at any time under common control with an express company, sleeping-car company, or carrier by railroad? If so, state:

(1) The name of the controlling company, giving date of such control.

(2) Whether control was direct or indirect.

(3) The manner in which control was established.

(4) The extent of such control.

(5) The name of the express company, sleeping-car company, or carrier by railroad, with which it was under common control.

ANSWER

(a) The Pennsylvania Railroad Company is the sole owner of the outstanding capital stock of respondent and has owned such stock since the issuance thereof.

(b) No.

QUESTION 5

Are, or were at any time, any of the officers or directors of the respondent also officers or directors of express companies, sleeping-car companies, or carriers by railroad? If so, show the positions held with respondent and such other companies or carriers, giving names of such companies or carriers and period in which such joint relationship existed.

ANSWER

The following officers or directors of the respondent are at the present time also officers or directors of the Pennsylvania Railroad Company:

58 Positions held with:

Name	Respondent	The Pennsylvania R. R. Co.
E. W. Smith	President and Director	Vice President
W. S. Franklin	Director	Vice President
J. Taney Wilcox	Secretary	Secretary
J. Gordon Watson	Assistant Secretary	Assistant Secretary
Geo. H. Pabst, Jr.	Treasurer	Asst. Vice President and Treasurer
H. W. Schotter	Assistant Treasurer	Assistant Treasurer
John Pemberton, Jr.	Assistant Treasurer	Assistant Treasurer
F. J. Fell, Jr.	Comptroller	Vice President and Comptroller
Elmer Hart	Assistant Comptroller	Deputy Comptroller
A. R. Meredith	Real Estate Agent	Real Estate Agent

QUESTION 6

(a) Describe in detail (including dates, and names of railroads) the operation of any equipment or facilities, or the performance of any services by respondent in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

(b) Describe in detail all respondent's operations not covered by Question 6(a) above.

(c) Attach copies of all contracts between respondent and any railroads.

Note: This question should be answered fully. A brief answer will not serve the Board's purpose.

ANSWER

(a) Under arrangements made by respondent with shippers and consignees, the respondent unloads, stores, reloads and handles other transit details at East Liberty, Pa., and Pittsburgh, Pa., for the account and convenience of said shippers and consignees, in connection with carload shipments of sugar entitled to storage-in-transit privileges under Pennsylvania Railroad Tariff I.C.C. 100. (Fourteenth revised page 388; copy attached, marked Exhibit 3) Respondent has performed such service since January 1, 1935.

Under arrangements made by respondent with shippers and consignees, the respondent during the period August 1937 to May 15, 1938 unloaded, stored, reloaded

and handled other transit details at Erie, Pa., for the account and convenience of said shippers and consignees, in connection with carload shipments of newsprint paper entitled to storage-in-transit privileges under Pennsylvania Railroad Tariff I.C.C. 100 (Fifth revised page 415; copy attached, marked Exhibit 4.) Such storage service is no longer performed but respondent stands ready to resume the service should the need therefor arise in the future.

(b) Respondent primarily conducts an independent warehouse operation completely segregated from the carrier business of The Pennsylvania Railroad Company. The warehouse operations consist of the storing and handling of commodities for tenants and patrons of the respondent.

59 Inbound cars are consigned to patrons and tenants of respondent in care of respondent, and are considered as delivered by the railroad company when placed at a designated point on the respondent's sidings. The unloading and handling in storage of such commodities is performed by the respondent for the account of its tenants and patrons. On outbound shipments, the storage of commodities and the loading of cars is performed by the respondent for the account of its tenants and patrons and delivery to the railroad company is considered as having been accomplished when loading has been completed and bill of lading signed. The foregoing applies to carload traffic.

With respect to less carload shipments, inbound, the respondent picks the shipments up at a designated point on the railroad company's station platform, the same as is done by any other consignee. The storage of such shipments in the warehouse of respondent is performed by the respondent for the account of its tenants and patrons. On outbound less carload shipments, the respondent, for the account of its tenants and patrons, makes delivery to the railroad company; delivery being considered as having been consummated when the bill of lading is signed.

Under contract with The Pennsylvania Railroad Company, the respondent accepts from the railroad company at Pittsburgh, Pa., such "over" freight, damaged refused freight and damaged unclaimed freight as may

be turned over by the railroad to the respondent for sale or other disposition. The respondent pays the Railroad the freight and other charges that have accrued upon such shipments. Out of the proceeds from the sale of such freight, the respondent retains a commission of 10% upon the amount thereof, deducts certain necessary expenses incident to reconditioning or transporting such freight and pays the balance of the gross proceeds to the Railroad Company.

The respondent from time to time also sublets space to tenants upon such terms and conditions as may be mutually agreed upon.

(c) Copy of contract dated and effective February 1, 1922, providing for the handling and disposition of over freight, damaged refused freight and damaged unclaimed freight by the respondent, is attached.

QUESTION 7

Attach statement of respondent's revenues received during the past three years, showing separately revenues received from operations covered by Question 6(a) above, and those received from operations covered by 6(b) above, itemizing amounts received under each heading.

ANSWER

Revenues received from operations covered by Question 6(a) above:

	1936	1937	1938
Storing and handling shipments accorded storage-in-transit privileges ...	$59,570.40	$30,239.93	$29,836.01

60 Revenues received from operations covered by Question 6(b) above:

	1936	1937	1938
General commercial storage	$ 63,011.60	$ 91,545.99	$73,702.99
Sale of damaged merchandise	8,599.00	11,409.00	8,881.86
Subleasing of available space to tenants ...	32,732.00	24,967.00	16,035.17
	$104,342.60	$127,921.99	$98,620.02

QUESTION 8

(a) State approximate percentage during each of the three years of respondent's total physical plant devoted to operations covered by Question 6(a) above.

(b) State separately for each of the past three years the approximate total of employee man-hours devoted to operations covered by Question 6(a) and 6(b) above. If figures as to man hours are not available, give approximate number of employes engaged in each of such operations.

ANSWER

	1936	1937	1938
(a) Operations at Pittsburgh, Pa., and East Liberty, Pa.	30%	12.5%	12.5%
Operations at Erie, Pa.	—	100. %	100. %

(b) Approximate number of employes engaged in operations covered by Question 6(a):

	1936	1937	1938
Storing of shipments accorded storage-in-transit privileges	28	14	14

Approximate number of employees engaged in operations covered by Question 6(b):

	1936	1937	1938
General commercial storage	30	42	42
Sale of damaged merchandise	3	3	3
Subleasing of space to tenants	4	4	4
	37	49	49

Figures as to man hours are not available. The number of employes engaged in various operations as shown above have been estimated on basis of the approximate number of men who would be required on a full-time basis to perform the work necessary in the various operations. As a practical matter, employes are frequently shifted from one class of work to another.

61 QUESTION 9

(a) List all railroad equipment in service of respondent at present date, such as freight, mail, express, combination or work cars, or locomotives.

(b) Has respondent ever used such equipment? (Explain)

(c) Has respondent always used such equipment? (Explain)

ANSWER

(a) None
(b) No.
(c) ——

QUESTION 10

Has respondent been a party to freight or passenger tariff concurrences, or powers of attorney filed with the Interstate Commerce Commission? (If so, state total number filed during respondent's existence, names of railroads in connection with which they were filed, the dates they were filed, the dates between which they were effective, and indicate whether they were filed under Part I or Part II of the Interstate Commerce Act.)

ANSWER

No.

QUESTION 11

Give the docket numbers or citations of all Court, Commission or Board decisions which would be helpful in determining the status of respondent under the Railroad Retirement Act.

ANSWER

None.

QUESTION 12

(a) Was respondent or any of its predecessors under Federal control? During what period?
(b) Did respondent receive deficit benefits under Section 204, or guaranty benefits under Section 209, of the Transportation Act of 1920?

ANSWER

(a) No.
(b) No.

QUESTION 13

(a) Is the respondent a common carrier?
(b) Is the respondent a department of any common carrier? (Explain)

62

ANSWER

(a) No.
(b) No.

QUESTION 14

(a) Is it the opinion of the responsible officers of the respondent that it is an "employer" within the meaning of the Railroad Retirement Act of 1937? Why? (Respondent may, if it desires, attach a brief in support of its opinion.)

(b) Does this opinion apply to the status of the respondent during its entire existence? If not, for how long and between what dates?

ANSWER

(a) No. It is the opinion of the officers of the respondent that it is not an "employer" within the meaning of the Railroad Retirement Act of 1937. Respondent is principally engaged in the development of its own independent warehouse operation. Such operation is completely segregated from the carrier business of The Pennsylvania Railroad Company and consists of the storing of commodities for its tenants and patrons, and the subleasing of offices to tenants in connection therewith. The warehouse operations of respondent in Pittsburgh, Pa. and East Liberty, Pa. are at the present time conducted in space which it leases from the Pennsylvania Railroad Company, as follows:

Warehouse and office portions of inbound and outbound freight station at the Duquesne Freight Station, Pittsburgh, Pa. Rental $26,880. per annum, plus water rent, insurance, light, heat and power. Lease effective May 10, 1937; terminable by either party upon 3 months' notice.

Warehouse at inbound freight house at East Liberty, Pa. Rental $5,544.00 per annum, plus cost of electric current in basement. Covered by two leases effective April 1, 1935 and May 1, 1935, respectively; both terminable by either party upon 30 days' notice.

Employes of respondent are (1) carried on the pay rolls of, and receive their pay checks from, the respondent; (2) covered by a separate working agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (copy of agreement attached, marked Exhibit

(6); and (3) supervised solely by respondent through its Superintendent. Employes of respondent are not accorded free transportation by any railroad company.

(b) Yes.

E. W. SMITH
E. W. Smith
President.

63 EXHIBIT No. 1(A)

To the Governor of the Commonwealth of Pennsylvania:
Sir:

In compliance with the requirements of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved the 29th day of April, A. D. 1874, and the several supplements thereto, the undersigned, all of whom are citizens of Pennsylvania having associated themselves together for the purpose hereinafter specified, and desiring that they may be incorporated, and that letters patent may issue to them and their successors according to law, do hereby certify:

1st. The name of the proposed corporation is Duquesne Warehouse Company.

2d. Said corporation is formed for the purpose of conducting a storage and warehouse business.

3rd. The business of said corporation is to be transacted in the County of Allegheny, Commonwealth of Pennsylvania, with its principal office in the City of Philadelphia, Commonwealth of Pennsylvannia.

4th. Said corporation is to exist Perpetually.

5th. The names and residences of the subscribers and the number of shares subscribed by each, are as follows:

Name.	Residence.	No. of Shares
Samuel Rea,	Bryn Mawr, Pa.	100
Charles E. Pugh,	Overbroow, Pa.	40
John B. Thayer,	Haverford, Pa.	30
W. H. Barnes,	Philadelphia, Pa.	20
A. J. County,	St. Davids, Pa.	10

65 6th. The number of directors of said corporation is fixed at Five and the names and residences of the directors who are chosen directors for the first year are as follows:

Name,	Residence.
Samuel Rea,	Bryn Mawr, Pa.
Charles E. Pugh,	Overbrook, Pa.
John B. Thayer,	Haverford, Pa.
W. H. Barnes,	Philadelphia, Pa.
A. J. County,	St. Davids, Pa.

7th. The amount of the capital stock of said corporation is $10,000 divided into 200 shares of the par value of $50, and $1,000, being ten per centum of the capital stock, has been paid in cash to the Treasurer of said corporation, whose names and residence are:

Taber Ashton, Swarthmore, Pa.

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SAMUEL REA (Seal)
CHAS. E. PUGH (Seal)
JOHN B. THAYER (Seal)
W. H. BARNES (Seal)
A. J. COUNTY (Seal)

State of Pennsylvania, } ss:
County of Philadelphia. }

Before me, a Notary Public in and for the county aforesaid, personally came the above named W. H. Barnes, Samuel Rea, and A. J. County, who, in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and Seal of office, this fifteenth day of June, A. D. 1906.

[SEAL.] LEWIS NEILSON

State of Pennsylvania, } ss:
County of Philadelphia. }

Personally appeared before me, this fifteenth day of June, A. D. 1906, W. H. Barnes, Samuel Rea, and A. J. County, who being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument are true.

SAMUEL REA
W. H. BARNES
A. J. COUNTY

Sworn and subscribed before me, the day and year aforesaid.

[SEAL.] LEWIS NEILSON

66 241 Aug 13 1906 27657

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Application of

DUQUESNE WAREHOUSE COMPANY

Executive Chamber,

Harrisburg, Aug 1 1906

To the Secretary of the Commonwealth:

Having examined the within application and found it to be in proper form, and within the purposes of the class of corporations specified in section two of the act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29th, A. D. 1874, and the several supplements thereto, hereby approve the same, and direct that letters patent issue according to law,

(Illegible)

Governor.

SECRETARY'S OFFICE.

Pennsylvania, ss:

Enrolled in Charter Book, No. 94 Page 241 Pd 2.50

Witness my hand and Seal of office, at Harrisburg this 1st day of August A. D. 1906.

ROBERT MCAFEE

Secretary of the Commonwealth.

Commonwealth of Pennsylvania, }
County of Allegheny, } ss:

Recorded on this 13 day of August A. D., 1906 in the Recorder's Office of said County in Charter Book, Vol. 41 Page 237 Given under my hand and the Seal of the said Office the day and year aforesaid.

JOHN A. FAIRMEN

Recorder.

67 DUQUESNE WAREHOUSE COMPANY

BY-LAWS

Adopted by the Board of Directors
10th September, 1906,
with amendments to and including
14th January, 1938

68 DUQUESNE WAREHOUSE COMPANY

BY-LAWS

Article I.

Principal Office.

Section 1. The Principal Office of the Company, and also the offices of the President, the Secretary, and the Treasurer, with the books and papers thereto belonging, shall be at Philadelphia, Pennsylvania.

Article II.

Stockholders.

Section 1. The annual meeting of the stockholders shall be held at the Principal Office of the Company in Philadelphia on the first Monday in April in each year, unless that day be duly designated as a legal holiday, in which event said meeting shall be held on the first day following which is not a legal holiday.

Section 2. Special meetings of the stockholders may be called at any time by order of the Board of Directors; and the President, on the request in writing of any number of stockholders representing not less than one-tenth in interest, shall call a special meeting of the stockholders, stating in the notice thereof specifically the objects of the meeting; and the objects stated in such notice, and no other, shall be acted on at such special meeting.

Section 3. At least two weeks' notice shall be given of the time when, and the place where, the annual or any special meeting of the stockholders is to be held, such notice to be signed by the Secretary of the Company, and to be

given in one or more newspapers published in Philadelphia, Pennsylvania, except when a meeting of the stockholders shall be called to take action on a subject, or subjects, 69 in regard to which an Act of Assembly specifically provides how notice shall be given.

Section 4. At each such annual meeting an election shall be held for four Directors, who shall be stockholders to the extent of not less than five shares, and a majority of whom shall be citizens of the Commonwealth of Pennsylvania, and who shall be chosen by a majority of the stock represented at the meeting, and who shall continue in office for one year and until their successors shall be duly elected and qualified.

Section 5. At all meetings of the stockholders fifty per cent. of the capital stock issued and outstanding, represented by the holders in person, or by proxy, shall constitute a quorum.

Section 6. A roll of the stockholders in alphabetical order, together with the number of shares held by each, shall be made by the Secretary, or by such other officer as may be duly designated custodian of the books containing this information, and laid before the stockholders at each of their meetings.

Section 7. The date of record for stockholders entitled to vote at the annual meeting shall be five days prior to the date of such annual meeting.

Section 8. The Board of Directors may fix in advance a date, not exceeding forty days preceding any special meeting or election of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any exchange or conversion or exchange of capital stock shall go into effect, as a record date for the determination of the stockholders entitled to vote at any such special meeting or election, or entitled to receive payment of any such dividend, or any such allotment of rights, or exercise the rights in respect of any such change, conversion or exchange of capital stock.

Section 9. Authority to represent at a stockholders' meeting any non-attending stockholders shall be evidenced by a proxy duly executed. Partnerships may sign in the

name of the partnership, and the signature of the
70 firm by any member thereof shall be valid. No proxy shall be valid for more than two months from the date thereof.

Section 10. All elections by the stockholders shall be by ballot, each share entitling the holder thereof to one vote in person or by proxy. The elections shall be conducted by three judges appointed by the Board of Directors, or, in the event of the Board of Directors failing to appoint, or the judges by it appointed failing to attend, judges shall be appointed by the stockholders present. The judges of election shall be stockholders in the Company. They shall, before entering upon their duties, take and subscribe an oath or affirmation that they will discharge the duties of their office or appointment with fidelity, and that they will not receive any vote but such as they verily believe to be legal. They shall certify to the result of the election conducted by them; and such certificate shall be recorded in the minute books of the corporation and filed with the archives of the Company.

Section 11. The stockholders of the Company may, at any meeting duly called and convened for the purpose, by a vote of three-fourths of all the stock, remove any Director or officer of the Company, and may then proceed to fill the vacancy, or vacancies, so caused.

Section 12. At each annual meeting of the stockholders there shall be presented a financial report as of the closing of the preceding fiscal year, duly verified by the Comptroller. The report need not be sent to the stockholders and no other verification shall be required.

Article III.

Directors.

Section 1. The government and direction of the affairs of the corporation shall be vested in a Board of four Directors, who shall be elected annually by the stockholders, as prescribed in Article II, and who shall hold office for one year and until their successors are duly elected and qualified.

71 Section 2. The Board of Directors shall have full power, and it is hereby expressly authorized, to increase, or decrease, the number of Directors, from time to

time without requiring a vote of the stockholders; provided, however, that the number of Directors shall never be less than three.

Section 3. The Board of Directors, elected at any annual meeting, shall meet on the date thereof, or within ten days thereafter, for organization, and shall then elect from among their number a President and one or more Vice-Presidents. They shall also elect a Secretary, and a Treasurer.

All the officers named in these By-Laws, except those provided for above, shall be appointed by the President subject to confirmation by the Board and hold office at the pleasure of the Board, and subject to the right of removal herein prescribed.

Section 4. Meetings of the Board of Directors shall be held at such time and place as the Board may, from time to time, designate.

A meeting may be called at any time by order of the President, or upon the written request of three members of the Board.

A majority of the Board shall constitute a quorum.

Section 5. The order of business at all meetings of the Board of Directors shall be as follows:

When a quorum appears the President shall call the Board of Directors to order.

The minutes shall be read, and considered as approved if there be no motion to amend them.

Reports of Committees.

Reports of Officers of the Company.

Miscellaneous Communications.

Unfinished Business.

New Business.

In the absence of the President, and Vice-Presidents, at any meeting, the Board of Directors may appoint one of their own number to act as presiding officer.

Section 6. The Board of Directors shall have power to fill any vacancy occasioned by death, resignation, incapacity or refusal to act, of any of their numbers, and shall likewise have power to remove from office or position any officer of the Company.

Article IV.

Officers.

President.

Section 1. The President shall have general supervision, direction and control, subject to the paramount authority of the Board of Directors, of all affairs of the Company, its property and business, and of all departments of its service.

He shall preside at all meetings of the Board of Directors, and preserve order, and regulate debate thereat, according to parliamentary rules, and appoint all Committees not otherwise ordered by the Board of Directors.

He shall also attend generally to the Company's executive business, and be, ex officio, a member of all Committees.

He shall have general control of all the officers of the Company, and shall prescribe their duties when not otherwise duly designated or specified.

Vice-Presidents.

Section 2. The Vice-Presidents shall, in case of the absence or disability of the President, exercise and perform all the powers and duties of the latter, and shall also exercise such other powers, and perform such other duties, as may be prescribed in the By-Laws or assigned to him by the President, or the Board of Directors.

Secretary.

Section 3. The Secretary shall be present at all meetings of the Board of Directors, and of the Committees thereof, and shall record all the votes of the corporation and the minutes of its transactions in a book to be kept for that purpose. He shall notify each member of all meetings of the Board of Directors, and of the Committees thereof; and furnish the Chairman of each Committee with a copy of the resolution appointing such Committee, and shall perform such other duties as the President or the Board of Directors may, from time to time require. The issue and transfer of certificates of the capital stock of the Company and the books showing the ownership thereof shall be under

his charge. He shall have charge of all books, maps,
73 letters, and records pertaining to his office, including all contracts authorized by the Board of Directors and shall have custody of the corporate seal of the Company.

The Secretary shall perform such other duties as may be assigned to him by the President, Vice-Presidents, or the Board of Directors.

He shall be sworn for the faithful performance of his duties, and shall be aided by one or more Assistant Secretaries.

Assistant Secretaries.

Section 4. The Assistant Secretaries shall act for the Secretary in his absence, and perform such other duties as may be assigned to them by the Secretary, the President, the Vice-Presidents, or the Board of Directors.

They shall be sworn for the faithful performance of their duties.

Treasurer.

Section 5. The Treasurer shall have charge and custody of the funds and securities of the corporation, and shall deposit the funds of the corporation to its credit in such depositories as the Board of Directors may from time to time designate, and funds so deposited shall be withdrawn only by check or draft signed by the Treasurer, an Assistant Treasurer, or Assistant to the Treasurer. Checks may be signed by such other persons as a Vice-President, the President or the Board may designate. Checks in payment of dividends and interest, voucher-checks and drafts for wages may have the signature of the Treasurer imprinted thereon by a signing device under conditions approved by the President or a Vice-President.

The Treasurer shall have authority, and such authority is hereby conferred to receive and to give receipt and full acquittance for, and make draft for, any and all amounts payable or which may become payable to this Company from any source or on any account whatsoever, in whatever form such payments may be made, and to endorse all checks, drafts or warrants drawn or endorsed to its order.

The Treasurer shall keep such books of account as may be required to show the receipt and disposition of all the moneys of the Company.

74 The Treasurer shall also perform such other duties as may be assigned to him by the President and Board

of Directors, and may be aided by one or more Assistant Treasurers, and Assistant to the Treasurer.

Assistant Treasurers

Assistant to the Treasurer.

Section 6. The Assistant Treasurers and Assistant to the Treasurer shall assist the Treasurer in the performance of his duties, and shall act for him in his absence.

Comptroller.

Section 7. The Comptroller shall keep in his office a general set of books containing a complete record of all the business transactions of the Company.

The Comptroller shall as often as necessary make an examination of the accounts of any officer, agent, or employe intrusted with the handling or care or money of the Company. It shall be the duty of the Comptroller to know that all money belonging to the Company collected from any source, by any officer, agent, or employe in properly accounted for and promptly paid into the Treasury, and that all accounts of the Company are properly and promptly settled.

The Comptroller, one of the Assistant Comptrollers, or such person as the President or Board may designate to sign for the Comptroller, shall approve for payment all vouchers, and only when bill for voucher shall have been approved in pursuance of proper authority by the President, a Vice-President, General Agent, or Superintendant, or such officer or person as the President or Board may designate to sign for any of the above-named officers.

The Comptroller shall see that all bonds required by the Board from officers, agents, or employes for the faithful performance of their duties are given, which bonds shall be retained by him and shall only be released upon a complete and satisfactory settlement of the accounts covered by them, unless otherwise ordered by the Board.

There shall be filed in the office of the Comptroller a record of all contracts, leases, and agreements affecting the revenues of the Company, and he shall be furnished by the proper officers with the necessary information in regard thereto.

He shall perform such other duties as may be assigned

to him by the President, the Vice-Presidents, or the
75 Board, He shall be aided by one or more Assistant Comptrollers.

Assistant Comptrollers.

Section 8. The Assistant Comptrollers shall act for the Comptroller in his absence and perform such other duties as may be assigned to them by the Comptroller, the President, the Vice-Presidents, or the Board.

Auditor of Disbursements.

Section 9. The Auditor of Disbursements shall, under the direction of the Comptroller, have immediate charge of all accounts relating to disbursements.

He shall examine the accounts for all the disbursements of the Company by voucher before payment is made, and see that bills are returned in due form and distributed to their proper accounts.

He shall not audit any bill for voucher unless it is certified to by the proper officer, and approved in pursuance of proper authority by the President, a Vice-President, General Agent, or Superintendent or such officer or person as the President, or Board, may designate to sign for any of the above-named officers.

All vouchers shall be signed by the Auditor of Disbursements, the Assistant Auditor of Disbursements, or such person as the President or Board may designate to sign for the Auditor of Disbursements, and certified to as having been examined, found correct and registered

All vouchers when receipted by the payees shall be returned to the Auditor of Disbursements and filed in his office.

He shall report to the Comptroller all deviations from the system of accounts prescribed for the disbursements of the Company.

He shall be aided by an Assistant Auditor of Disbursements, who shall act for him in his absence.

Real Estate Agent.

Section 10. The Real Estate Agent shall have custody of all deeds, releases and records of the real estate of the Company and the plans or maps thereto relating, and shall

examine and approve all conveyances and leases of real estate to, or from, the Company before execution, and have the same duly recorded when necessary.

76 Leases for a term of one year or less, and for a rental not exceeding six hundred dollars per annum, may be executed on behalf of the Company by the Real Estate Agent, and the corporate seal, duly attested, shall be affixed thereto.

Leases for a longer period than one year, or for an annual rental exceeding six hundred dollars, shall be approved by the Board and executed on behalf of the Company by the President, or a Vice-President, and the corporate seal, duly attested, shall be affixed thereto.

General Agent.

Section 11. The General Agent shall be responsible for the efficient management of all the warehouses of the Company and shall exercise a direct supervision thereover. Under the direction of the President, Vice-President or Board of Directors, he shall have charge of the Commercial and Operating Departments of the Company, approve bills covering disbursements pertaining to those Departments, and forward them to the Auditor of Disbursements for voucher.

He shall render such statements of the Company's business as may be required from time to time, and perform such other duties as may be assigned to him by the President, the Vice-Presidents, or the Board.

He shall be aided by a Superintendent.

Superintendent.

Section 12. The Superintendent, under the direction and approval of the General Agent, shall conduct the Commercial and Operating Departments of the Company, appoint all employes therein, and have the power of suspension for cause, and shall approve for voucher bills covering disbursements pertaining to those Departments.

He shall be responsible for the collection of all earnings of the Company, and shall deposit all moneys received by him to the credit of the Company in such depositories as the Board may designate, and shall make report thereof to the Treasurer and the Comptroller.

He shall attend to making such arrangements as shall increase the traffic of the Company, and shall examine and report all claims upon the Company for loss, damage and overcharge, to the General Agent, for disposition.

He shall, under instructions from the General Agent, issue rates and make contracts for handling traffic, see that all such contracts are fulfilled, keep such statements
77 of traffic as may be found desirable, sign all warehouse receipts, and perform such other duties as may be assigned to him.

The Superintendent shall give bond, with such corporate surety and in such sum as may be approved by the Board, for the faithful performance of his duties.

Bookkeeper.

Section 13. The Bookkeeper shall countersign all warehouse receipts, keep a record of all issues and cancelations thereof, and shall, under the direction of the Superintendent, keep such books and accounts at the Company's warehouse as may be required by the Superintendent, the Treasurer or Comptroller.

The Bookkeeper shall give bond, with such corporate surety and in such sum as may be approved by the Board, for the faithful performance of his duties.

Additional Officers, Agents and Employes.

Section 14. In addition to the officers elected by the Board of Directors, there may be appointed by the President such other officers, agents and employes as may, in his judgment, be deemed necessary for the effective transaction of the business of the Company, subject to the approval of the Board of Directors at their next meeting subsequent to such appointments.

Section 15. The compensation of the officers and employes, and payment thereof, shall be fixed and made either by the Board of Directors, or in such manner and by such agencies as they may prescribe.

Article V.

Issue and Transfer of Stock.

Section 1. Certificates of stock, in such form as may be adopted by the Board of Directors, shall be issued to the

stockholders, when signed by the President, or a Vice-President, Secretary or an Assistant Secretary, authenticated by the seal of the Company, and in the absence of any one of the aforesaid officers, or in any other emergency that may arise, the certificates may be signed for such officers by such person or persons as the President may designate with the approval of the Board, or, in the ab-
78 sence of the President, by such other officer as the Board may appoint.

Section 2. Stock shall be transferred by the holder thereof, or by the legal representative of such holder, in person, or by attorney duly authorized, only on the books of the Company, at the office of the Secretary, or that of such other officer of the Company as may be duly designated custodian of the said books, according to such forms as the Board of Directors may prescribe, upon the surrender of the certificate, or certificates, representing the holding intended to be transferred. The certificate, or certificates, surrendered shall be canceled at the time of transfer.

Section 3. Any person, or persons, desiring a certificate of stock to be issued in lieu of one lost, stolen, or destroyed, shall, after applying to the Secretary of the Company for the necessary forms, advertise such loss, theft, or destruction, in one or more newspapers published in Philadelphia, Pennsylvania, twice a week for four weeks, and any such person, or persons, nonresident of Philadelphia, shall, in addition thereto, advertise in like manner in a newspaper published at, or near, his, her or their residence if such paper be published twice a week, if only once a week, then in four successive numbers thereof, stating the number and date of the certificate lost, stolen, or destroyed, the number of shares represented thereby, and that application is about to be made to the Board of Directors for a certificate in lieu thereof. The applicant shall then furnish the Board of Directors with an affidavit, or affirmation, describing the certificate, its loss, theft, or destruction, and its advertisement in conformity herewith, accompanied by a copy of the advertisement, and also a bond of indemnity, with satisfactory personal or corporate security, in at least double the amount of the certificate, against any damage that may arise from issuing a new certificate; whereupon the Board of Directors may order (one month after the date of the appearance of the last advertisement) the issue

of a new certificate, of the same tenor and amount with the one alleged to be lost, stolen, or destroyed, therein specifying that it is in lieu thereof.

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Article VI.

Corporate Seal.

Section 1. The corporate seal of the Company shall be of such design as the Board of Directors may from time to time adopt. It shall be in the custody of the Secretary.

Article VII.

Duplicate Checks, Vouchers, etc.

Section 1. All applications for the issue of duplicate scrip, checks, vouchers, or other obligations of the Company, in lieu of originals alleged to be lost, stolen, or destroyed, shall be in writing and embrace a full and detailed statement describing the document, and giving the time, place and manner of the alleged loss, theft, or destruction, and shall be signed and sworn to by the applicant, and forwarded through the proper channel to the Board of Directors by the head of the Department issuing such certificates or obligations. If the amount involved is $100. or over, the Board of Directors alone shall have power to authorize the issue of a duplicate, but if less than $100., a duplicate may be issued on the authority of the President or a Vice-President. Before any duplicate shall be issued, the applicant shall give bond, with corporate surety satisfactory to the Board of Directors, in double the amount or value involved, to indemnify the Company against the presentation or use of the original.

Settlement of Bills.

Section 2. The President and Vice-Presidents are authorized to approve all bills for voucher covering disbursements of every character made by the Company.

The General Agent or Superintendent are authorized to approve bills for voucher covering disbursements pertaining to the Commercial and Operating Departments.

All vouchers which shall have remained, or may hereafter remain, unused for a period of sixty days shall be returned to the Treasurer for cancelation, and a report made at the

same time of the facts in connection therewith to the executive officer who shall have approved for voucher the bill covering such proposed disbursement, and the same
80 shall be forthwith canceled and turned over by the Treasurer to the Comptroller, unless, in the judgment of such executive officer, it is to the interest of the Company to hold the same uncanceled, in which case they shall be held for a further period of sixty days and then canceled, unless otherwise ordered by the Board.

Article VIII.

Adoption and Alterations of By-Laws.

Section 1. Subject to the foregoing By-Laws, and not inconsistent with any existing law, the Board of Directors shall have the power, and it is hereby expressly conferred upon them by the stockholders, to make, alter, or amend and rescind all By-Laws, necessary for conducting the business of the Company by the vote of not less than two-thirds of the entire Board, excepting Article VIII hereof and those Articles, or any portions thereof, which embody the requirements of the Law, but such By-Laws, or any provision thereof, made, altered, amended or rescinded by the Board of Directors, shall from time to time be submitted to the stockholders for approval, and may be altered or repealed by the stockholders at any Annual Meeting, or upon notice at any special meeting, and when so amended or repealed shall not be re-established by the Directors without the approval of the stockholders.

EXHIBIT No. 3

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Fourteenth Revised Page 388
Cancels
Thirteenth Revised Page 388

Section No. 23
I. C. C. 100 I. R. C. 10 III. C. C. 15 M. P. U. C. 10 Pa. P. U. C. 50 W. Va. 20 Ohio 15

THE PENNSYLVANIA RAILROAD COMPANY

RULES GOVERNING TRANSIT PRIVILEGES ON SUGAR, CARLOADS, AT EAST LIBERTY AND PITTSBURGH, PA.

See Rule V-1

DESCRIPTION OF ORIGIN AND DESTINATION TERRITORY

In order to be entitled to transit privileges accorded under this tariff, the entire movement must conform to the following application and the P. R. R. receives a road haul to and from the transit point, except as provided in Item 7.

Item No.	Origin Territory	Route	Destination Territory
1	Stations in Trunk Line and New England Territories, as defined in Rule 150; also stations in Carolina and Southeastern Territories, as defined in Rule 150, received from connections at Potomac Transfer.	P. R. R. Pittsburgh, P. R. R.	Stations on the P. R. R. and connections on and west of the P. R. R., Erie, Pa., to Washington, Pa., through Pittsburgh, Pa., where the through rates apply via Pittsburgh, Pa., including stations on the P. R. R. from Stoneboro to New Castle, Pa.; also stations on the P. R. R., between Pittsburgh (exclusive) and Butler, Pa. (inclusive), and stations on connecting lines beyond Butler, Pa.; also stations on the P. R. R. and Monongahela Railway between Pittsburgh, Pa. (exclusive) and Fairmont, W. Va. (inclusive) through McKeesport and Brownsville Jct., Pa.; also stations on the P. & L. E. R. R. from East California to Homestead, Pa. (exclusive).
2	Stations on the P. R. R. and connections west of Pittsburgh, Pa.	P. R. R. Pittsburgh, P. R. R.	Stations on the P. R. R. and connections east of Pittsburgh, Pa., where the through rates apply via Pittsburgh, Pa.
3	Baltimore, Md.	P. R. R., Pittsburgh, P. R. R.	Stations on the P. R. R. from Kiskiminetas Jct., Pa., to Buffalo, N. Y., through Red Bank, Oil City and Corry, Pa., and stations on the P. R. R. from Corry to Erie, Pa.
4	The term transit house (warehouse) as used in connection with this transit privilege at East Liberty and Pittsburgh, Pa., is understood to include one or more units under one ownership or control, whether located in the same or different sections of East Liberty and Pittsburgh, Pa., within P. R. R. switching limits.		

APPLICABLE AT TERRE HAUTE, IND.

Item No.	Origin Territory	Route	Destination Territory
5	Stations on the P. R. R. and connections on and east of the P. R. R., South Bend, Ind., to Louisville, Ky.	P. R. R. Terre Haute, P. R. R.	Stations on the P. R. R. and connections west of the Indiana-Illinois State Line.
6	Origination on or received from connections at stations west of Terre Haute, Ind.	P. R. R. Terre Haute, P. R. R.	Stations on the P. R. R. and connections on and east of the P. R. R., South Bend, Ind., to Louisville, Ky., through Frankfort, Terre Haute and Indianapolis, Ind.

APPLICABLE AT TOLEDO, OHIO

APPLICABLE AT TOLEDO, OHIO

Item No.	Origin Territory	Route	Destination Territory
7	Stations on Trunk Line and New England Territories, as defined in Rule 150; also stations in Carolina and Southeastern Territories received from connections at Potomac Transfer.	P. R. R. Toledo, P. R. R. and/or connections.	Stations on the P. R. R. and connections on and west of the P. R. R., Detroit, Mich., to Cincinnati, Ohio, through Columbus, Ohio, also Mansfield, Ohio.
8	Stations on the P. R. R. and connections on and west of the P. R. R., Detroit, Mich., to Indianapolis, Ind., through Butler, Logansport and Frankfort; also stations south of the Ohio River when received from connections at East St. Louis or Effingham, Ill.	P. R. R. Toledo, P. R. R.	Stations on the P. R. R. and connections on and east of the P. R. R., Detroit, Mich., to Columbus, Ohio, through Bucyrus.

APPLICABLE AT YOUNGSTOWN, OHIO

Item No.	Origin Territory	Route	Destination Territory
9	Stations in Trunk Line and New England Territories, as defined in Rule 150; also stations in Carolina and Southeastern Territories received by the P. R. R. from connections at Potomac Transfer.	P. R. R. (Lines East of Pittsburgh.) Pittsburgh, Pa., Youngstown, Ohio, P. R. R.	Stations on the P. R. R. and connections on and west of the P. R. R. from Ashtabula Harbor to Cincinnati, Ohio, through Warren, Alliance Jct., Bayard, Newcomerstown, Trinway, Zanesville and Morrow, Ohio. Stations on the P. R. R. west of Youngstown to Niles, Ohio, also from East Liverpool to Bayard, Ohio, and from East Palestine to Alliance Jct., Ohio.
10	Stations on the P. R. R. and connections on and west of the P. R. R., Mackinaw City, Mich., to St. Louis, Mo., through Fort Wayne, Columbia City, Logansport and Terre Haute, Ind.	P. R. R. Youngstown, Ohio, P. R. R.	Stations on the P. R. R. and connections on and east of the P. R. R., Erie, Pa., to Pittsburgh, Pa., through New Castle and Rochester, Pa.

APPLICABLE AT ZANESVILLE, OHIO

Item No.	Origin Territory	Route	Destination Territory
11	Stations in Colorado, Nebraska, Wyoming and Utah, when received by the P. R. R. from connections at Chicago, East St. Louis, Peoria, Ill., or Effner, Ind.	P. R. R. Zanesville, P. R. R.	Stations on the P. R. R. and connections on and east of the P. R. R., Trinway, Ohio, to Buffalo, N. Y., through Steubenville, Ohio, Rochester, New Castle, Oil City and Corry, Pa.

For explanation or abbreviations, see page 8.

∆Reduction.

Issued June 30, 1937.
G. P. SHAW, Chief of Tariff Bureau,
15 North 32nd Street, PHILADELPHIA, PA.

AGENT'S INDEX No. 55 (23—60266) (900) Effective August 1, 1937.
(Formerly Tariff File C-86)

EXHIBIT No. 4.

82

Section No. 29
I. C. C. 100 I. R. C. 10 Ill. C. C. 15 M. P. U. C. 10 Pa. P. U. C. 50 W. Va. 20 Ohio 15

THE PENNSYLVANIA RAILROAD COMPANY

Fifth Revised Page 415
Cancels
Fourth Revised Page 415

RULES GOVERNING TRANSIT PRIVILEGES ON MATCHES, CARLOADS, AT STATIONS SHOWN ON PAGE 414

For General Rules and Regulations, refer to Rules 5 to 240, pages 41 to 47

Rule No.	SUBJECT	EXPLANATION
AB-1	Definition	Matches, carloads, originating at Wadsworth, Ohio, may be stopped in transit for storage at: Chicago, Ill., for re-shipment to stations west of the Illinois-Indiana State Line and on and west of the west bank of Lake Michigan. Youngstown, Ohio, for reshipment to points east where rates are applicable point of origin to final destination through transit point. Toledo, Ohio, for reshipment to points beyond Toledo to which through rates are applicable via Toledo. Matches, carloads, originating at Akron, Ohio, and Barberton, Ohio, may be stopped for storage at: Youngstown, Ohio, for reshipment to stations on the P. R. R. and connecting lines on and east of the P. R. R. from Erie, Pa., to Pittsburgh, Pa., through New Castle, Pa.; and Rochester, Pa. ♦(Will not apply on traffic destined to or moving via points in Southern Freight Association Territory. See Rule 150.) ♦Toledo, Ohio, for reshipment to points beyond Toledo to which through rates are applicable via Toledo.
AB-2	Time Limit.	The period of time allowed for transit privilege will be twelve (12) months from the date of unloading into the transit house. At the expiration of the time limit transit privilege shall absolutely cease and the applicable rates to and from the transit point will apply.
AB-3	Transit Charge.	The transit charge shall be three and one-half (3½) cents per 100 pounds, which shall be in addition to the through rate.
AB-4	Transit Rate.	The through rate to be applied shall be the lawfully published rate on Matches, carloads, from original point of shipment to final destination, in effect via transit point at time of initial shipment from point of origin.

RULES GOVERNING TRANSIT PRIVILEGES ON NEWSPRINT PAPER, CARLOADS, AT ERIE, PA.

For General Rules and Regulations, refer to Rules 5 to 240, pages 41 to 47

Rule No.	SUBJECT	EXPLANATION

Rule No.	SUBJECT	EXPLANATION
AB-5	Definition.	Newsprint Paper, carloads, originating at Millinocket, Maine, may be stopped in transit for storage at Erie, Pa., for reshipment to Pittsburgh, Pa. Routing from Millinocket, Maine, must be via connecting lines to Buffalo, N. Y., thence P. R. R. Privileges expires December 31, 1937. ①♦Newsprint Paper, carloads, originating at Three Rivers, Quebec, may be stopped in transit for storage at Erie, Pa., for reshipment to Pittsburgh, Pa. Routing from Three Rivers, Quebec, must be via Canadian Pacific Ry. to Hamilton, Ontario, Toronto, Hamilton & Buffalo Ry., to Welland, Ontario, M. C. R. R. to Buffalo, N. Y., thence P. R. R. Privileges expire December 31, 1937.
AB-6	Time Limit.	The period of time allowed for transit privilege will be six (6) months from date of unloading into the transit house, at expiration of the time limit transit privilege shall absolutely cease and the applicable rates to and from transit point will apply.
AB-7	Transit Charge.	The transit charge shall be five (5) cents per 100 pounds which shall be in addition to the through rate.
AB-8	Transit Rate.	The through rate to be applied shall be the lawfully published rate on Newsprint Paper, carloads, from Millinocket, Maine, to Pittsburgh, Pa., in effect via transit point at time of initial shipment from Millinocket, Maine. ①♦The through rate to be applied shall be the lawfully published rate on Newsprint Paper, carloads, from Three Rivers, Quebec, to Pittsburgh, Pa., in effect via transit point at time of initial shipment from Three Rivers, Quebec.

♦Reduction.

♦Increase.

①Effective October 22, 1937. Issued on five (5) days' notice under permission of the Interstate Commerce Commission No. 164083 of October 12, 1937.

For explanation of abbreviations, see page 8.

83 EXHIBIT NO. 5

SALVAGE FRT. CONTRACT

Whereas, the Pennsylvania Railroad Company has, and from time to time hereafter will have, over freight, damaged refused freight and damaged unclaimed freight at various stations along its lines of railroad; and

Whereas, the Pennsylvania Railroad Company and the Duquesne Warehouse Company mutually desire to provide for the handling and disposition of such over freight, damaged refused freight and damaged unclaimed freight by said Duquesne Warehouse Company upon the terms and conditions hereinafter set forth:

Now, therefore, said Pennsylvania Railroad Company, as party of the first part and hereinafter called "Railroad Company", and Duquesne Warehouse Company, as party of the second part and hereinafter called "Warehouse Company", mutually covenant and agree each with the other as follows:

First. Any such over freight, damaged refused freight and damaged unclaimed freight, except live stock, bulk freight or perishable freight, as the Railroad Company may desire to have handled and disposed of by the Warehouse Company in pursuance of this agreement, shall be transported by the Railroad Company to the City of Pittsburgh, State of Pennsylvania, and there delivered to the Warehouse Company in the following manner:

Immediately upon the arrival of any lot or lots of any of such freight at said City of Pittsburgh the proper agent of the Railroad Company shall immediately notify the Warehouse Company thereof and of the place in said city where the Warehouse Company may receive the same and the Warehouse Company shall thereupon promptly call for such lot or lots of such freight and remove the same to its warehouse in said City of Pittsburgh, first paying to the Railroad Company any and all lawful freight and other charges that may have accrued and that may then be due upon such lot or lots of freight at the time of the delivery thereof to the Warehouse Company.

Whenever any lot or lots of such freight may be delivered to the Warehouse Company as aforesaid, the Warehouse Company shall concurrently give to the proper agent

of the Railroad Company a receipt in duplicate for each and every lot of such freight, and shall place on the freight bill and freight receipt and on said receipt in duplicate
84 a lot number which lot number shall also be placed with paint, crayon or other suitable means for marking on each lot or piece of freight covered by the respective receipt and freight bill aforesaid.

Second. The Warehouse Company shall keep a detailed and accurate record of all sales made by it and a description of each piece, parcel or lot of freight so sold, the amount received therefor and all expenses in connection with each and every such sale and shall, upon request of the Railroad Company, transmit to the Railroad Company, in duplicate, complete and accurate copies of such record; and upon like request the Railroad Company shall have the right and be entitled to inspect the books, records, papers, warehouse and premises of the Warehouse Company during working hours of any business day, and the Warehouse Company hereby expressly agrees to give to any agent or representative of the Railroad Company appointed for that purpose ready, convenient and complete access to such books, records, papers, warehouse and premises.

Third. Out of the gross proceeds realized by the Warehouse Company from each sale, the Warehouse Company shall receive a commission of ten per cent (10%) upon the amount thereof and shall have credit for and deduct the amount of money, if any, actually paid by the Warehouse Company for reconditioning any such piece, parcel or lot of freight, and shall also have credit for and deduct drayage charges, if any, actually paid by it for transporting such freight from the station of the Railroad Company to the Warehouse Company's warehouse, and shall also have credit for and deduct all freight and other charges paid by the Warehouse Company to the Railroad Company as hereinbefore provided, and the balance of said gross proceeds then remaining shall be paid by the Warehouse Company to the Railroad Company not later than ten days after date of sale.

Fourth. In the event that either party hereto shall, prior to the sale of any such freight, ascertain and determine the true owner of said freight, then the Warehouse Company shall upon written instructions from the Railroad Company so to do deliver such freight to the true owner thereof upon the payment by said true owner to the Ware-

house Company of all lawful accrued freight and other charges thereon which the Warehouse Company shall have paid to the Railroad Company as hereinbefore provided.

Fifth. In the event that the total gross proceeds
85 realized from any sale of such freight do not equal the amount of the lawful freight and other charges paid by the Warehouse Company to the Railroad Company as aforesaid, plus the ten percent. (10%) upon the amount of such gross proceeds which the Warehouse Company is entitled to receive as aforesaid, plus the amount, if any, actually paid by the Warehouse Company for reconditioning such freight as aforesaid, and plus the drayage charges, if any, actually paid by the Warehouse Company as aforesaid, then in any such event the Warehouse Company shall receive credit for the difference in the accounting hereunder between it and the Railroad Company.

In the event any lot or lots of such freight delivered to the Warehouse Company by the Railroad Company in pursuance of this agreement shall be or become so worthless as to be unsalable, then in such event the Warehouse Company shall dispose of such unsalable lot or lots of such freight in such manner as the Railroad Company may direct.

Sixth. Nothing in this agreement shall be deemed or construed to obligate the Railroad Company to pay to the Warehouse Company any other or further compensation than the ten per cent. (10%) upon the amount of gross proceeds realized from sales of the said freight covered by this agreement made by the Warehouse Company as herein provided, except if and when any of said freight is returned by the Warehouse Company upon the order of the Railroad Company, and then in such event the Warehouse Company shall receive from the Railroad Company the amount of the freight, drayage and expenditures for reconditioning actually paid by the Warehouse Company and the reasonable or lawful storage charges of the Warehouse Company.

Seventh. The Warehouse Company shall at its own sole cost and expense keep the said freight delivered to it pursuant to the terms of this agreement insured against loss and damage by fire in such amount or amounts as will be appropriate to afford reasonably adequate protection.

Eighth. The Warehouse Company shall give to the Railroad Company a bond or bonds in the aggregate penal

sum of Five Thousand Dollars ($5000.00), with corporate surety to be approved by the Railroad Company, conditioned upon the punctual payment by the Warehouse Company to the Railroad Company of any and all sums of money that may become due the Railroad Company under and pursuant to the terms of this agreement, and also upon the faithful performance by the
86 Warehouse Company of each and all of the terms, conditions and agreements herein contained to be kept and performed by the Warehouse Company.

Ninth. The Warehouse Company shall and it hereby expressly agrees to fully protect, indemnify and save harmless the Railroad Company from and against any and all liability, claims, loss, cost, damage and expense on account of negligence of the Warehouse Company, its agents, servants or representatives, in or in connection with the handling or disposition by the Warehouse Company of any lot or lots of the said freight covered by this agreement and which may be delivered to it pursuant to this agreement.

The Warehouse Company shall also and it hereby expressly agrees to be entirely and solely responsible for all liability for personal injuries and other damages (including payments under Workmen's Compensation laws) which may be sustained by the employe or agents of the Railroad Company, the employes or agents of the Warehouse Company, or any other person or persons through the acts or negligence of the Warehouse Company, its employes or agents, in connection with or resulting from any or all of the responsibilities and duties specifically mentioned or reasonably to be implied under this agreement, as well as in connection with the operation of the Warehouse Company in the performance of this agreement.

Tenth. This agreement may be terminated at any time by either party hereto giving to the other party 180 days' notice in writing of its intention to terminate the same. Any such notice addressed to the Railroad Company shall be served upon its Warehouse Superintendent and any such notice addressed to the Warehouse Company may be served upon any available officer or agent of that company.

In Witness Whereof, the parties hereto have caused this agreement to be executed in duplicate by their respective

officers thereunto lawfully authorized as of the First day of February, A. D. 1922.

PENNSYLVANIA RAILROAD COMPANY,
By (Illegible)
Its Vice-President.

Attest:
J. L. MASON
Assistant Secretary.

DUQUESNE WAREHOUSE COMPANY
By A. J. COUNT
Its President.

Attest:
(Illegible)
Assistant Secretary.

87 EXHIBIT NO. 6.

AGREEMENT

Between

THE DUQUESNE WAREHOUSE COMPANY

and the

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

Covering

Hours of Service and Working Conditions of the Employes Therein Named.

Effective August 1, 1937.

Scope: These rules shall govern the hours of service and working conditions of the following classes of employes under the jurisdiction of the Superintendent of The Duquesne Warehouse Company.

Clerical Employes, Receiving and Delivery Clerks, Shipping Clerks, Office Boys, Messengers, Assistant Foremen, Floormen, Freight Truckers, Warehousemen, Watchmen, Janitors, Elevator Operators, Platform Cleaners, Loaders, Coopererers, and Sealers; and all other employes doing work of similar character.

Exceptions; These rules do not apply to:

Sales Agent, Chief Clerk to Superintendent, General Foreman, and Personal Clerk to Superintendent.

Rule 1. SENIORITY:

Seniority begins at the time employe's pay starts. Where two or more employes enter upon their duties at the same hour on the same day, employer shall at that time designate rank of such employes.

Rule 2. RE-ENTERING SERVICE:

Employers who leave the service voluntarily will forfeit all seniority and if subsequently

re-employed will establish a new seniority date in the manner prescribed in Rule 1.

Rule 3. SENIORITY DISTRICT:

There will be one seniority district established in each city.

Rule 4. SENIORITY ROSTER:

A seniority roster of employes showing number, name, classification or title, and date of entry in the service will be posted in places accessible to all employes affected. Rosters will be revised as of January 1st and posted in January of each year.

An employe will have sixty days from date his name first appears on the roster to appeal his roster date or relative standing thereon, except that in the case of an employe off duty on leave of absence, sickness, disability, or suspension at the time the roster is posted, this time limit will apply from the date the employe returns to duty.

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If no appeal is taken within the sixty-day period, future appeals will not be entertained unless the employe's roster date or his relative standing is changed from that first posted. A note will be placed on each roster showing date posted and time limit of appeal.

Each position coming within the scope of these rules will be designated by a symbol or number. Bulletins advertising such positions will show symbol or numbers of positions advertised.

Copy of list showing symbols or numbers of positions, together with rate of pay applicable thereto, will be posted in places accessible to employes.

Rule 5. PROMOTION BASIS:

Employes covered by these rules shall be in line for promotion. Promotions shall be based on seniority, fitness and ability. Fitness and ability being sufficient, seniority shall prevail.

Note:—The word "sufficient" is intended to more clearly establish the right of the senior employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability.

Rule 6. SENIORITY OF EMPLOYES PROMOTED TO EXCEPTED OR OFFICIAL POSITIONS:

Employes appointed to or now filling excepted or official positions shall retain and continue to accumulate seniority in the district from which appointed and if they return to the service covered by these rules they may exercise their full seniority.

Individuals employed to fill supervisory or official positions subsequent to the effective date of these rules will not accumulate seniority.

Rule 7. STATUS AFTER LEAVE OF ABSENCE OR WHEN RELIEVED FROM TEMPORARY ASSIGNMENT:

An employe returning after leave of absence or when relieved from a temporary assignment, or excepted or official positions may return to his former position, providing it has not been abolished or senior unassigned employe has not exercised seniority rights thereon; or may upon return or within five days thereafter, exercise seniority rights on any position bulletined during such absence. In the event employe's former position has been abolished or senior unassigned employe has exercised rights thereon, the returning employe may exercise seniority over any junior employe if exercised within five days. Employe displaced will exercise seniority in the same manner.

Rule 8. REDUCING AND INCREASING FORCES:

When reducing forces, seniority rights shall govern. Employes classified as clerical employes, receiving and delivery clerks, shipping clerks, office boys, messengers, and assistant foremen shall be given at least six days ad-

vance notice of force reduction or abolition of positions. Employes whose positions are abolished may exercise their seniority rights over junior employes. Other employes affected may exercise their seniority rights in the same manner.

90 When forces are increased or vacancies occur, employes shall be returned to service in order of their seniority. Qualified available furloughed employes shall be given preference on a seniority basis to all extra work.

Employes desiring to avail themselves of this rule must file their name and address with their supervisory officer within ten days from the date they are out off from regular positions and advise promptly of any change in address. Employes failing to return to the service within seven days after being notified (by mail or telegram sent to the address last given) or give satisfactory reasons for not doing so, will be considered as having forfeited their seniority.

Any employe who has been laid off for lack of work for a year or more shall be considered as having lost his seniority rights.

Rule 9. RATING POSITIONS:

Positions (not employes) shall be rated and the transfer of rate from one position to another shall not be permitted.

Rule 10. BULLETINS:

New positions or vacancies will be promptly bulletined at places accessible to all employes in the seniority district, bulletin to show symboi number, location, title, and description of position, assigned hours, and rate of pay. Employes desiring such position will file their applications with the designated official within five days from date of posting, and assignment will be made andn posted within five days thereafter.

Rule 11. TEMPORARY ASSIGNMENT:

Positions or vacancies of thirty days or less shall be considered as temporary and may be filled without bulletining.

Rule 12. FORMER POSITION VACANT:

When an employe bids for and is awarded a permanent position, his former position will be declared vacant and bulletined. Such employe can file bid for position he has just vacated and same shall be considered, provided no other employe bids for same.

Rule 13. DECLINING POSITION:

Employes declining promotion or declining to bid for a bulletined position shall not lose their seniority.

Rule 14. FAILURE TO QUALIFY:

Employes awarded bulletined positions and failing to qualify within thirty days shall retain all of their seniority, may bid on any bulletined position thereafter, but may not displace any regularly assigned employe.

Rule 15. STARTING TIME:

Regular assignments shall have a fixed starting time which shall not be changed without at least thirty-six hours advance notice to the employes affected.

When the established starting time of a regular position is changed one hour or more for more than six consecutive days, employe affected may, within five days thereafter, exercise seniority.

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Change in starting time due to Daylight Saving Time does not constitute a change comprehended by this rule.

Rule 16. CHANGES IN RATES:

Except when changes in rates result from negotiations or adjustments of a general character, the changing of a rate of a specified position shall constitute a new position.

Rule 17. LEAVE OF ABSENCE:

When the requirements of the service will permit, employes on request will be granted leave of absence for a period not to exceed ninety days in any one twelve-month period. Absence on account of sickness or disability is not a leave of absence under this rule. An employe on leave of absence, who engages in other employment automatically forfeits seniority.

Permission for leave of absence will be confirmed in writing and local chairman furnished copy of same.

Rule 18. LEAVE OF ABSENCE—COMMITTEE WORK:

Employes will upon request be given necessary leave of absence for committee work or handling affairs of their organization without impairment of seniority.

Rule 19. DAY'S WORK AND OVERTIME:

Eight hours work, exclusive of meal period, shall constitute a day. Time and one-half will be paid for all time worked on any day after employe has been on duty eight hours.

Rule 20. FLUCTUATING WORK:

Employes who report for fluctuating work and are required to perform service will be paid for actual time worked or held on duty, with a minimum of four hours at the pro-rata rate.

Rule 21. MEAL PERIOD:

The meal period shall be regularly assigned, shall be allowed between the ending of the fourth hour and the beginning of the seventh hour after starting work, and shall not be less than thirty minutes or more than one hour unless mutually agreed between the management and the duly accredited representatives of the employes.

Rule 22. CONTINUOUS WORK WITHOUT MEAL PERIOD:

For regular operation requiring continuous hours, eight consecutive hours without a meal period may be assigned constituting a day's work, in which case, twenty minutes will be allowed in which to eat without deduction in pay.

Rule 23. NOTIFIED OR CALLED:

Employes notified or called to perform work not continuous with, before or after their regular work period or on Sundays and specified holidays, shall be allowed a minimum of three hours for two hours' work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis.

92 Rule 24. ABSORBING OVERTIME:

Employes will not be required or permitted to suspend work during regular hours to absorb overtime.

Rule 25. SUNDAY AND HOLIDAY WORK:

Work performed on Sundays and the following legal holidays, namely: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays falls on Sunday and the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at time and one-half time. This rule does not apply to watchmen.

Rule 26. PRESERVATION OF RATES:

Established rates of pay or positions shall not be discontinued or abolished and new ones created covering relatively the same class of work, which will have the effect of reducing rates of pay or evading the application of these rules.

Employes temporarily or permanently assigned to higher-rated positions will receive

the higher rate while occupying such positions. Employes assigned temporarily to lower-rated positions will not have their rates reduced.

Rule 27. NEW POSITIONS:

When new positions are created, rates of pay will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district.

Rule 28. ANNUAL VACATIONS:

Annual vacations with pay will be allowed as follows:

Hourly-rated employees:

After one year's continuous service—Three days.

After two years' continuous service—Six days.

Monthly-rated employes:

After one year's continuous service—Six days.

After two years' continuous service—Twelve days.

Rule 29. SATURDAY AFTERNOON RELEASE:

Only such clerical employes as are necessary for the continuous operation of the company and whose work cannot be reasonably deferred shall be required to work Saturday afternoon, and no deduction shall be made from the pay of employes thus released.

Rule 30. POSTING NOTICES:

A place will be provided in offices and departments for the posting of bulletins and notices affecting employes covered by these rules. No bulletins or notices will be posted without permission of the management.

Rule 31. MACHINES, EQUIPMENT, AND SUPPLIES:

Typewriters, mechanical devices, and other equipment and supplies will be furnished where the company requires their use.

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Rule 32. BOND PREMIUMS:

Employes will not be required to pay premiums on bonds required by the company.

93 Rule 33. DISCIPLINE AND APPEALS:

Employes will not be suspended nor dismissed without a fair and impartial trial at which they may be accompanied by an employe covered by these rules; neither will they be held off duty for minor offenses pending investigation or decision. Employes will be notified in writing ten days in advance of date suspension takes effect.

When written statements are taken in controversial matters, employes making same will be furnished with copy upon request.

Time lost pending or attending investigations will be applied against suspension. Time lost as result of appeals from discipline will not be applied against suspension.

An employe who considers that an injustice has been done him in discipline matters and who has appealed his case in writing to the Superintendent within ten days, will be given a hearing at which he may be accompanied by an employe covered by these rules to assist him in presenting his case. After his appeal has been acted upon by the Superintendent, he may if he so desires be represented before the Superintendent by his duly accredited representatives.

An employe who considers that an injustice has been done him with respect to any matter other than discipline, and who has within ten days from date of origin of such grievance, presented his case in writing to his immediate superior may, if the decision of his immediate superior, which shall be given promptly in writing, is unsatisfactory, turn the matter over direct to his duly accredited representatives, and any further handling of the matter will be by the duly accredited representatives with the Superintendent.

If the charge against the employe is not sustained it will be stricken from the record and employe will be paid for all time lost less amount earned elsewhere during the period of suspension.

Rule 34. DULY ACCREDITED REPRESENTATIVES:

Where the term "duly accredited representatives" appears in this agreement, it shall be understood to mean the regularly constituted committee and/or the officers of The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, of which such committee or officer is a part.

Rule 35. FURNISHING OF SCHEDULES:

A copy of this schedule shall be furnished by the company to each employe affected.

Rule 36. NOTICE OF CHANGE:

If a revision of any or all of these rules is desired by either the company or the duly accredited representatives, thirty days' notice in writing of the modifications desired shall be given by the party to this agreement desiring said modification and a meeting to negotiate said proposed modifications will be held as soon as practicable after the expiration of the thirty days.

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94 Dated at Pittsburgh, Pa., this Eleventh day of August, 1937.

For the Duquesne Warehouse Company:
By /s/ H. A. Bietenduefel
Superintendent.

FOR THE EMPLOYES REPRESENTED BY THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES:
By /s/ JOS. PEARSON
By /s/ MORTIMER P. SULLIVAN
By /s/ EARL A. HARSHMAN
By /s/ WILLIAM J. MAHONEY
By /s/ C. H. BIER
General Chairman.

95 RAILROAD RETIREMENT BOARD

Washington

Murray W. Latimer, Chairman — Lester P. Schoene, General Counsel

M. R. Reed
L. M. Eddy

Charles L. Hodge
Secretary

May 23, 1939

Mr. E. W. Smith, President
Duquesne Warehouse Company
1617 Pennsylvania Boulevard
Philadelphia, Pennsylvania

Dear Sir:

Thank you for Mr. Fell's letter of February 17, 1939, supplying information concerning the status under the Railroad Retirement Act of Duquesne Warehouse Company.

Duquesne, since its incorporation on August 1, 1906, has been wholly owned and controlled by the Pennsylvania Railroad Company (hereinafter called Pennsylvania). Duquesne so owned and controlled is an employer within the meaning of Section 1 (a) of the Act if it "performs any service * * * in connection with the * * * receipt, delivery, * * * transfer in transit, * * * storage, or handling of property by railroad." This is true even though the business of Duquesne may be segregated from the business of Pennsylvania.

Since at least January 1, 1935, Duquesne has engaged in the unloading, storage, reloading, and handling of property in transit on Pennsylvania performed under arrangements made by Duquesne with shippers and consignees. Such services, are undertaken under Pennsylvania Tariffs at Pennsylvania's East Liberty and Pittsburgh, Pa. freight stations in space at those stations leased to Duquesne by Pennsylvania. During the period August 1937 to May 1938, similar services were performed at Erie, Pa., under Pennsylvania tariffs. Duquesne stands ready to resume its services at Erie when the need arises. Clearly, the services described are, as you state, in connection with the receipt, delivery, transfer in transit, storage or handling of prop-

erty transported by railroad. See General Counsel's opinion on *The Long Dock Company* and cases therein cited. Payments for such employer services constitute approximately 57, 23, and 30 per cent of Duquesne's total operating revenues in the years 1936, 1937, and 1938.

96 Other operations of Duquesne regularly performed for shippers and consignees since at least August 28, 1935, include the receipt from Pennsylvania, the delivery to Pennsylvania and the loading and unloading of carload freight transported or to be transported by Pennsylvania. Except for loading and unloading the same services are performed for less than carload shipments. Such operations constitute services performed in connection with the receipt, delivery, storage or handling of property transported by railroad. General Counsel's opinion No. 1939 R.R. 4 on *Baltimore Fidelity Warehouse Company.*

The employer services thus far described account for approximately 74, 77, and 80 per cent of Duquesne's total operating revenues of $163,912, $158,160, and $128,456 for the years 1936, 1937 and 1938. Commissions for sale of damage freight for Pennsylvania and rentals from space sublet account for the remainder of Duquesne's revenues.

Duquesne's employees are frequenty shifted from one operation or service to another.

It is unnecessary to determine whether the sale of damaged freight for Pennsylvania and the subletting of space constitute employer services. It is clear at least that Duquesne is principally engaged in employer services and is, therefore, an employer within the meaning of the Act. *Baltimore Fidelity Warehouse Company, supra.* On the facts stated service for the Duquesne Warehouse Company is creditable, in accordance with Section 1 (f) of the Act, from August 1, 1906, the day of incorporation to date.

Copies of the *Long Dock Company* and *Baltimore Fidelity Warehouse Company* rulings are enclosed for your information.

Very truly yours,
(Sgd) Lester P. Schoene
Lester P. Schoene,
General Counsel

Enclosures (2)

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In reply refer to
File No. 16:0A1

SOCIAL SECURITY BOARD
Washington, D. C.

Office of the General Counsel

May 25, 1939

Hon. Lester P. Schoene,
General Counsel,
Railroad Retirement Board,
Washington, D. C.

Dear Sir:

We have received a copy of a letter dated May 19, 1939, in which you express the opinion that the Duquesne Warehouse Company, 1617 Pennsylvania Boulevard, Philadelphia, Pennsylvania, is an "employer" within the meaning of the Railroad Retirement Act.

We have informed the Bureau of Old-Age Insurance that, in the event that any claim is received based on service with the Duquesne Warehouse Company, the applicant should be informed of your ruling and should be advised that, since he may be entitled to benefits under the Railroad Retirement Act, no action will be taken by the Social Security Board with respect to his claim in the absence of further communication from the applicant with regard thereto. The Bureau of Old-Age Insurance will suggest to any such applicant that he file with your Board his application for benefits.

Very truly yours,

ROBERT P. BINGHAM
Robert P. Bingham
Assistant General Counsel

98 DUQUESNE WAREHOUSE COMPANY

Office of the President,

Pennsylvania Station,

Pittsburgh, Pa., September 11, 1939.

Railroad Retirement Board,
Washington, D. C.

Gentlemen:

Enclosed you will find your questionnaire Form LQ-2-C answered by this company, and to be used in substitution of that heretofore answered and sent you at your request. These substituted answers are sent you because since the sending to you of the earlier form as executed examination of the wording of its questions discloses that the answers do not accurately cover the inquiries, the reason being that the wording of the questions in that form is not sufficiently clear to be fully understood. And further, the questions in your present form which is enclosed bring out more adequately the purpose and object of your inquiry, and permit more accuracy in the answers to those questions.

Yours truly,

E. W. SMITH
President

Encls.

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Questionnaire Form LQ-2-C
Adopted April, '39

RAILROAD RETIREMENT BOARD

Q.—1.(a) Name and address of company.
(b) Type of organization (i. e., corporation, partnership, joint-stock company, etc.).

A.—1.(a) Duquesne Warehouse Company, 1617 Pennsylvania Boulevard, Philadelphia, Pa.
(b) Corporation.

Q.—2.(a) Date on which company organized.
(b) Name of state under whose laws company was organized.
(c) State the original purposes for which the company was organized, and any subsequent

changes in those purposes, giving dates thereof.

A.—2.(a) August 1, 1906.

(b) Commonwealth of Pennsylvania.

(c) Conducting a public warehouse business, including storage and handling of goods, wares, merchandise and other property.

Q.—3. State the names of all predecessor and successor companies of the company, if any, and their dates of organization, and if such companies are no longer in existence, the dates on which their existence was terminated.

A.—3. None.

100 Q.—4. Is the company engaged to any extent in the transportation of passengers or property? If so,

(a) State what type or types of transportation (rail, bus, truck, boat, etc.), and whether freight or passengers or both.

(b) Is such transportation performed exclusively for the company itself? If not, describe the extent to which such transportation is performed for others.

(c) Under what tariffs and other arrangements is such transportation performed?

(d) With what railroads, if any, and to what extent is transportation performed by the company coordinated with, in substitution for, or a feeder for railroad transportation?

(e) With what railroads, if any, and to what extent does the company interchange freight or passengers? Under what arrangements (through joint tariffs, contracts, etc.) are freight or passengers interchanged?

(f) Supply copies of all written contracts, and set forth terms of verbal arrangements or agreements, covering the transportation performed by the company.

A.—4. No.

Q.—5. Is the company engaged to any extent in the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage or handling of property transported by railroad? If so,

(a) Describe fully such operations.
(b) For what railroads are such operations performed?
(c) Under what tariffs, if any, are such operations performed?
(d) Furnish copies of all written contracts and set forth the terms of all verbal arrangements or agreements between the company and others, covering such operations.

A.—5. No.

101 Q.—6. Is the company engaged to any extent in the supplying of products to a railroad or railroads for use in railroad transportation business? If so,
(a) Describe fully such operations.
(b) To what railroad or railroads are such products supplied?
(c) Describe the arrangements under which such products are supplied to a railroad or railroads.

A.—6. No.

Q.—7. Is the company engaged to any extent in the supplying to a railroad or railroads of any service or services used in railroad transportation business? If so,
(a) Describe fully such operations.
(b) To what railroad or railroads are such services supplied?
(c) Describe the arrangements under which such service or services are supplied to such railroad or railroads.

A.—7. No.

102 Q.—8. Describe any other operations of the company of the same nature as those described in response to questions 5, 6 and 7 above, but performed for others than railroad companies.

A.—8. None.

Q.—9. Describe any other operations of the company not covered by the responses to questions 4 through 8, above.

A.—9. The company conducts a public warehouse business at Pittsburgh, Pennsylvania, and issues receipts under the Warehouse Receipts Act of the Commonwealth of Pennsylvania.

Q.—10. Do the answers to questions 4 through 9 apply substantially to all of the past history and organization of the company? If not, please set forth the differences.

A.—10. Yes.

103 Q.—11. Attach statement showing separately for each year since January 1, 1935,

(a) The revenues received from,
(b) The equipment used in, and
(c) The number of employees engaged in;

(1) The transportation of passengers or property. (Question 4)

(2) The receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad. (Question 5)

(3) The supplying of products to a railroad or railroads for use in railroad transportation business. (Question 6)

(4) The supplying to a railroad or railroads of any service or services used in railroad transportation business. (Question 7)

If the answers to items (1), (2), (3) and (4) are all "none" then item (5) need not be answered.

(5) Other operations of the company, itemized by type of operation.

A.—11. The answers to items (1), (2), (3) and (4) are all "none".

104 Q.—12. Cite any reference to decisions of courts or administrative bodies which may be helpful in determining the status of the company under the Railroad Retirement Act.

A.—12. *Guaranty Claim of Central Elevator & Warehouse Co.*, 72 I.C.C. 169; *Turner, Dennis & Lowry Lbr. Co.* v. *Chicago, M. & St. P. Ry. Co.*, 271 U.S. 259, 262; *Scott Bros., Inc., Collection and Delivery Service*, 2 I.C.C. M.C.C. 155, 159.

Q.—13. Furnish any additional information considered to be pertinent to an understanding of the operations of the company.

A.—13. None.

Q.—14. (a) What is the opinion of the responsible officers of the company as to whether it is an "employer" within the scope of the Railroad Retirement Act of 1937? Set forth the reasons for this opinion.

(b) Does this opinion apply to the status of the company during its entire existence? If not, set forth the reasons why it does not so apply.

A.—14. (a) It is the opinion of the officers of the Company that the Duquesne Warehouse Company is not an "employer" within the meaning of the Railroad Retirement Act of 1937. The Company is altogether engaged in its own independent commercial warehouse business, and which is completely separated from the transportation business of The Pennsylvania Railroad Company. The Warehouse Company is not a carrier by railroad subject to Part I of the Interstate Commerce Act. Nor does it operate any equipment or facility, or perform any service in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property in the course of transportation by railroad.

(b) Yes.

E. W. Smith
E. W. Smith
President

September 11, 1939.

MEMORANDUM

105 Re: Duquesne Warehouse Company.

The Duquesne Warehouse Company is a corporation of the State of Pennsylvania doing a commercial warehouse business at Pittsburgh, Pa. It holds itself out as conducting a public warehouse. It issues warehouse receipts, and is subject to the Pennsylvania Warehouse Receipts Act. Its stock is wholly owned by The Pennsylvania Railroad Company. At Pittsburgh it has two leased buildings where it conducts its business. One is at East Liberty and the other is in Pittsburgh proper. At the East Liberty house the only commodity handled is sugar. This is an account of the California & Hawaiian Sugar Refining Corporation. The sugar is partly refined in California and partly in New York. That refined in California comes east by ship to one of the eastern ports, such as Philadelphia or Baltimore, and then moves by rail to Pittsburgh which is used as a distributing point. That refined at New York moves by rail to Pittsburgh, and from there is subsequently distributed. All sugar either coming in or going out is in carlots. At the other building in Pittsburgh proper a substantial warehouse business is conducted. The business comes into the warehouse chiefly by rail, say 95%. The other is trucked in but not locally. Coming by rail, it arrives either in carlot or less. About 40% moves out by truck, and 60% by rail, either carload or less, but principally less. There are direct railroad siding connections at both East Liberty and Pittsburgh proper. And in the buildings both at East Liberty and Pittsburgh proper the railroad company maintains its own freight agencies with its separate freight agents for the receipt and delivery of carload freight and less.

The Railroad Company also delivers to the Warehouse Company freight which is damaged or refused. In making such delivery to the Warehouse Company the Railroad Company entirely severs its connection with the transportation of the property. The Warehouse Company recondi-tions the such damaged or refused freight and sells it at private sale. For its services it charges 10% of the gross proceeds of sale, with deductions for any necessary expense such as reconditioning, and remits the balance to the Railroad Company.

The buildings, both at East Liberty and Pittsburgh

proper, are owned by the Railroad Company and leased to the Warehouse Company, with the exception of those portions which are kept by the Railroad Company for freight station agencies in each building.

106 The sugar and other freight which are sent to the Warehouse Company in railroad service is consigned to the owner in care of the Warehouse Company. The Warehouse Company is thus the consignee. *Merchants' Warehouse Co.* v. *United States*, 283 U.S. 501. This is true also under the Federal Bills of Lading Act where consignee is defined as "the person named in the bill as the person to whom delivery of the goods is to be made." And delivery to the care of party is a sufficient delivery for the carrier. *City National Bank of El Paso, Texas* v. *El Paso & N. E. R. Co., et al.*, 262 U.S. 695; *Philadelphia Tapestry Mills* v. *New England S. S. Co.*, 146 N. E. 777 (Supreme Judicial Court of Massachusetts). The sugar is subject to a transit privilege covered by a tariff—P.R.R.—I.C.C. 100. A provision in that tariff is this:

> "(b) While the commodities named in this tariff are stored in transit under these rules, their custody and possession, as between carrier and the consignee or owner, shall be that of the consignee or owner."

In the handling of this sugar and other freight received by it for storage, the Warehouse Company accords the property more than just storage. In carload lots it loads and unloads when the cars are placed at the warehouse. In less than carload it accepts from the Railroad Company inbound, and ships via the Railroad Company outbound. On outbound shipments it takes from the Railroad Company bills of lading. But in accepting, in handling in the warehouse, and in shipping outbound, it renders services to the owners of the property, and for which it makes appropriate charges. For instance, in handling sugar it fills orders of the owner for distribution to the owner's customers. For example, there are two kinds of sugar—the brown and the granulated. The granulated is subdivided into cubes, powdered, etc. Again there are some 52 separate types and grades of packages. There is the cloth bag of so many pounds, and the cloth bag of other pounds. There is the paper bag of different kinds, and the paper bag of sizes. There is the individual package, and there is the carton. In filling orders, these different kinds and

types of sugar in packages have to be assembled and shipped out accordingly. This service, of course, is that of a warehouseman and not of a carrier. As to it, the Supreme Court in the *Merchants' Warehouse Co. case, supra,* said this:

> "* * * By Rule 23 of the Consolidated Freight Classification, the carriers may not distribute carloads of freight in less than carload lots, nor assemble smaller lots into carloads. By Rule 14, the carriers
> 107 confine their service with respect to carload shipments to one consignor and one consignee. The service rendered by appellants' warehouses in distributing and assembling package carload freight is thus one which a carrier is not authorized or permitted to render, even at its own public freight stations, and, if performed by it, would nullify its published rates for carload transportation service. See *New York, New Haven & H. R. R. v. Interstate Commerce Commission,* 200 U.S. 361, 26 S. Ct. 272, 50 L. Ed. 515."

Employees of the Warehouse Company are on the payroll of that company and are paid by that company. They have never been employees of the Railroad Company. They are not accorded the pass privilege; they are not entitled to become members of The Pennsylvania Railroad Voluntary Relief Department; nor may they be members of The Pennsylvania Railroad Employes Provident and Loan Association. Membership in the Relief Department is limited to employees or former employees; that in the Provident and Loan Association to employees. The employees of the Warehouse Company are members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and with which the Warehouse Company has a working agreement. The question at issue is whether the Warehouse Company is an employer as defined in the Railroad Retirement Act. That definition so far as here material is this:

> "(a) The term 'employer' means any carrier (as defined in subsection (m) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking

service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, * * *."

The definition in the Retirement Act of 1935 is the same as in the present Act, except that trucking service there is excluded, while in the present Act trucking service, casual service, and casual operation of equipment or facilities are excluded. But it is perfectly clear that the lan-
108 guage was taken from the Interstate Commerce Act which defines "transportation" as follows:

"* * * The term 'transportation' as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported."

What the Retirement Act does is to define "employer" as any carrier subject to Part I of the Interstate Commerce Act, and couples with that any company directly or indirectly owned or controlled by the carrier and which operates any equipment or performs any transportation service as that term is defined in the Interstate Commerce Act in connection with the transportation of passengers or property by railroad. The words in the definition as to receipt, delivery, elevation, etc. are words used in connection with the property which is being transported by railroad. That, of course, means property which is in the course of rail transportation but is being handled by the subsidiary company. There are instances well known where some of these transportation services are not done by the rail carriers themselves. For instance, refrigeration for some lines is done by the Fruit Growers Express Company, a railroad owned corporation. Or delivery may be made by an agency which is owned or controlled by the Railroad Company. These are transportation services performed by these other companies for the railroad com-

panies. But the property meanwhile is in the course of railroad transportation.

These particular services which are singled out by name are all coupled with the words "transported by railroad". In the Interstate Commerce Act, Sec. 1 (3), the term "railroad" is defined, and is this:

> "* * * The term 'railroad' as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of
> 109 every kind used or necessary in the transportation of the persons or property designated herein, including all feight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. * * *"

Nowhere in this definition are warehouses specifically mentioned. True, they are covered in the term "terminal facilities" where those terminal facilities are used as part of the railroad transportation. And those words "terminal facilities" are qualified by these: "of every kind used or necessary in the transportation of the persons or property designated herein." The definition throughout is limited to the property while the same is being transported by railroad. When the property is out of the possession of the carrier, in storage or otherwise, it is not in the course of railroad transportation. It may get back into railroad transportation, or it may not, but it is not there at the time. And it is significant to note that as a fact the charges of these outside warehouse companies are never filed with the Interstate Commerce Commission, and that Commission has never attempted to assume jurisdiction over the charges or practices of commercial warehouses. In fact, it has expressly disclaimed such jurisdiction, as will more fully appear in the following part of this memorandum.

The situation is this. Both the Interstate Commerce Act and the Railroad Retirement Act are based on transportation by railroad. The first covers persons and property, and the second persons. But they both relate to the same transportation. We have in the Commerce Act, Sec. 1 (3), a definition of the term "railroad". Under that definition

the term includes bridges, carfloats, depots, yards, grounds, terminals, etc., but all used or necessary in the interstate transportation of persons or property. In the same paragraph there is a definition of the term "transportation", and under that definition are included locomotives, cars, etc., and further, a specification of detailed services which go to make up this transportation. They are specifically enumerated: receipt, delivery, elevation, transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

In the Railroad Retirement Act an employer is defined as a carrier which is subject to Part I of the Interstate Commerce Act. That kind of a definition as to "carrier" takes with it the definition of the term "transportation" as found in the Commerce Act. Consequently, it was not necessary there to numerate the several transportation services such as elevation, refrigeration or storage. But it was well known to the framers of the Retirement Act that there are certain common carrier services which are not performed by the railroads themselves. *United States* v. *Fruit Growers' Express Co.*, 279 U.S. 363. But all of these services are in connection with property while in the course of transportation by railroad. It was these railroad owned or controlled companies furnishing part of the railroad transportation which it was the intention of the framers of the Retirement Act to include in the terms of that Act. In phrasing the language to include such companies, they are described as performing any service, with certain exceptions, in connection with the transportation of passengers or property by railroad. In the Retirement Act there is no definition as in the Commerce Act of the term "transportation". Consequently, the alternative was used in specifying the particular services which go to make up such interstate transportation as is contained in the Interstate Commerce Act. Hence, the present wording in the Retirement Act, which as to such services, is almost an exact duplicate of that found in the Commerce Act, but also these words in the Retirement Act, as in the Commerce Act, are coupled with the qualifying words as to transportation by railroad.

When property is consigned to the owner, care of the warehouse, the owner takes possession but the railroad makes delivery. When property is shipped out over the

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railroad by the warehouse, the warehouse acts as agent of the owner who is the shipper. But there the railroad company receives the property. In the case of carload freight, delivery is made when the car is placed on the siding of the warehouse company. In the case of less carload freight, delivery is made when the property is given to the warehouse company by the carrier. And on outbound freight receipt of the property is accepted by the railroad company when it gets the property into its possession and issues its bill of lading. But certainly, these services are neither delivery nor receipt by the warehouse company.

They are services altogether of the railroad company. 111 And that is true both in customary practice; as the situation is understood commercially; and as those words are used in the Retirement Act and the Commerce Act in relation to interstate transportation by railroad.

That the property handled by the warehouse company for storage and other purposes is not while in the possession of the warehouse company in the course of railroad transportation may perhaps be better shown by limiting our discussion to the service of storage. And we are assuming that it is transit storage. Our argument progresses in this way:

I. It is not an obligation of the railroad company to furnish general storage, and this either on its lines or off its lines.

True, storage is a service included in the term "transportation" under the definition in the Interstate Commerce Act. But that means storage only incidental to transportation, as for instance, where goods are received and forwarding is withheld pending shipping instructions. Again, where goods reach destination, the consignee is notified, the period of free time expires, and the goods are not removed. Cases covering matters of this kind are the *Detlebach case*, 239 U.S. 588, and the *Prescott case*, 240 U.S. 632. But it is decidedly not a part of the duty of the carrier to furnish general storage for the care of goods which have been transported by railroad, or which may be transported after leaving storage.

"The efficient use of freight cars is an essential of an adequate transportation system. To secure it,

broad powers are conferred upon the Commission. Compare *United States* v. *New River Co.*, 265 U.S. 533, 44 S. Ct. 610, 68 L. Ed. 1165; *Avent* v. *United States*, 266 U.S. 127, 45 S. Ct. 34, 69 L. Ed. 202; *United States* v. *P. Koenig Coal Co.* (No. 216, April 12, 1926), 270 U.S. 512, 46 S. Ct. 392, 70 L. Ed. 709. One cause of undue detention is lack of promptness in loading at the point of origin, or in unloading at the point of destination. Another cause is diversion of the car from its primary use as an instrument of transportation by employing it as a place of storage, either at destination or at reconsignment points, for a long period while seeking a market for the goods stored therein. To permit a shipper so to use freight cars is obviously
112 beyond the ordinary duties of a carrier. The right to assess charges for undue detention existed at common law. Now, they are subject like other freight charges, to regulation by the Commission. Demurrage charges are thus published as a part of the tariffs filed pursuant to the statutes."

Turner, Dennis & Lowry Lbr. Co. v. *Chicago, M. & St. P. Ry. Co.*, 271 U.S. 259, 262 (1926).

The Railroad Retirement Board itself has sensed this situation in its instructions with respect to the application of the Railroad Retirement Act as shown by the following from the Board's memorandum No. UI-S-1—COVERAGE OF "EMPLOYERS," "EMPLOYEE REPRESENTATIVES," AND "EMPLOYEES" UNDER THE RAILROAD RETIREMENT ACT OF 1937 AND RELATION TO COVERAGE UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT, DATED OCTOBER 7, 1938:

"This brings us to the main question relating to the second requirement for carrier subsidiary coverage which is: What are and what are not services in connection with railroad transportation. The general principle applicable to this question is stated in the Board's regulations:

'Sec. 2.07. *Service or operation in connection with railroad transportation.*—The service rendered or the operation of equipment or facilities by persons or companies owned or controlled or under common control with a carrier is in connection with the transportation of passengers or prop-

erty by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, if such service or operation is reasonably directly related, functionally or economically to the performance of obligations which a company or person or companies or persons have undertaken as common carriers by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.'

* * *

"Services relating to storage to be employer service must be railroad storage, that is, the storage must be of property received for a carrier employer and awaiting transportation by the carrier employer or awaiting delivery by the carrier employer following transportation by the carrier employer. Performance
113 of the usual commercial storage and warehouse business is not an employer service. The same distinction is drawn in performance of services in connection with elevation of property transported by railroad. The operation of a grain elevator for the receipt of grain for transporting by a railroad, or for delivery of grain transported by a railroad, or for transfer of grain from one railroad to another for continued transportation is the performance of an employer service. But doing the business of a general commercial elevator does not constitute the performance of an employer service."

II. Where freight is carried to destination and not removed within a reasonable time after arrival, the right of the carrier is to place in public storage where the responsibility of the carrier entirely ceases.

Our bill of lading is published in the Consolidated Freight Classification, and hence has a tariff status. The bill of lading, Sec. 4 (a), provides that after notice of arrival, placement of the property for delivery at destination, and the expiration of free time, property not removed may be placed in public storage by the carrier; the liability of the carrier thereafter as to the property is com-

pletely extinguished. In other words, the transportation of the property by railroad, and the liability of the carrier in connection with that property is completely ended when such storage is accomplished. True, in the case of transit freight the property is not placed in storage by the carrier. But it is taken in delivery by the owner and may be placed in storage or handled otherwise by the owner as he may determine. But the point is that in all instances where property after delivery is placed in general storage, and where the warehousing is not that of the carrier, the responsibility of the carrier is entirely ended.

> "In undertaking the transportation, the defendant became liable 'for any loss, damage or injury to such property caused by it' or by any connecting carrier to whom the goods would be delivered, but this merely connected the initial carrier with responsibility to the end of the route. The nature of its responsibility was established by the contract of transportation and the obligation existing under its common law duty. It does
> 114 not appear from the evidence that the defendant omitted to perform any of the acts required by any federal statute, or at common law, or by its contract. Within a reasonable time allowed for the convenience of the consignee, the freight passed into the custody of the terminal carrier as a warehouseman and finally into a storage warehouse, and if any negligence is attributable in the premises, it should be imputed to the warehouseman not to the carrier. * * *"
>
> *Keystone Publishing Co., Appellant*, v. *Penna. R. R. Co.*, 78 Pa. Super. 486, 491 (1922).

III. In the application of the word "storage" as a part of the definition of the term "transportation", the Interstate Commerce Commission has repeatedly held it to be restricted to that storage which is incidental only to transportation.

The first case is *Guaranty Claim of Central Elevator & Warehouse Co.*, 72 I.C.C. 169 (1922). That case arose under the guarantee provisions of the Transportation Act, 1920. It was an application by the Illinois Central, and the question was whether the operations of the Warehouse Company could properly be considered as railway operations.

There, as here, the Railroad Company wholly owned the Elevator and Warehouse Company; and there, as here, the Elevator and Warehouse Company was a public facility, and with respect to two of the elevators the grain handled was entirely export. But the Commission declined to hold that the storage in the elevator was storage under the definition of "transportation" in the Interstate Commerce Act. It said this:

> "The transportation act contains no general definition of 'railroad' or of 'transportation'. The railroad and warehouse companies point out, however, that both of these terms are defined in section 1 of the interstate commerce act. In that section the term 'railroad' is said to include, *inter alia*, 'all * * * terminals and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds used or necessary in the transportation or delivery of any such property,' and the term 'transportation' to include 'locomotives, cars and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.' These definitions, placed together in the same section, are interdependent one upon the other; without the definition of 'transportation' the definition of 'railroad' is incomplete. No definition of the term 'system of transportation' appears in either the transportation act or interstate commerce act, and the definition of 'transportation' in the interstate commerce act is of doubtful value as an aid in determining the meaning of 'system of transportation' as used in section 209 of the transportation act, 1920. It is quite obvious, however, that while certain of the services performed by the Central Elevator & Warehouse Company are incidental to transportation services other of such services can not be so considered in any proper sense. The receipt and delivery of property are, of course, a part of a carrier's transportation service. Elevation and transfer in transit have frequently been found by us

and by the courts to constitute necessary steps in the transportation of various kinds of property. *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U.S. 42; *Union Pacific Railroad Company* v. *Updike Grain Company*, 222 U.S. 215.

"Storage of property transported is a transportation service only to the extent that storage is necessarily incidental to transporting such property, and the term has been used in section 1 in that limited sense. As was said by the court in *State* v. *Southern Pacific Company, supra:*

> 'We think that the storage of goods by a railroad in its warehouses, as a matter incidental to its business as such, contemplates and looks to a rotation of storage as immediate and prompt as the railroad corporation can make it. * * * To be incidental business, the storage must be preliminary either to immediate transportation or immediate removal.'

"'The revenues of the warehouse company are derived on the one hand from elevation of grain and certain other services which properly pertain to transportation, and, on the other, from storage of grain for hire for indefinite periods and other services which are not transportation services, and are not actualy incidental thereto. But it seems beyond question that the
116 activities of this company which give it character and definitely establish its status are its storage or public-warehouse operations. Admittedly the reason for its incorporation was to enable it to store grain and issue storage receipts therefor. These things the railroad company could not lawfully do under the laws of Louisiana. Having been created for these particular purposes, the railroad company and its subsidiaries also turned over to it by lease agreements the services incidental to transportation, such as elevation and transfer in transit, which these carriers might have retained unto themselves. The fact that the railroad company guarantees payment of all expenses and obligations of every kind of the warehouse company and recaptures its excess earnings, if any, does not alter the outstanding fact that the railroad companies could not themselves lawfully carry on the storage or public-

warehouse business that the warehouse company is doing."

And recently in its motor carrier decisions the Commission has held to the same effect.

"Some analogies may be helpful. By virtue of section 1 (3) of part I, services by rail carriers in connection with the storage of property transported are included within the term 'transportation', and thus 'come within the jurisdiction of the Commission.' Separate charges therefor must be shown in the tariffs of the carriers. The Commission has frequently decided controversies involving the reasonableness of such charges and discriminations and the like growing out of the rendering of the services. But the warehousing companies who perform the service are not carriers subject to part I (*Guaranty Claim of Central Elevator and Warehouse Co.*, 72 I.C.C. 169) even though wholly owned subsidiaries of a rail carrier. It would not be reasonable to assert that in the event the United States Warehouse Act (39 Stat. 486) regulating the operation of warehouses, had contained a provision subjecting such operations to the jurisdiction of the Secretary of Agriculture 'except to the extent that they are subject to the Interstate Commerce Act', all warehouses which furnished any service to rail carriers could escape the jurisdiction of the Warehouse Act merely because of the fact that what they did for rail carriers was reflected in rail tariffs and passed on to the shipper as
117 rail charges. Such a conclusion is not tenable, yet the situation seems on all fours with the one herein discussed. The same thing might apply as well to elevator service, icing service, wharfage, docking, and others."

Scott Bros., Inc., Collection and Delivery Service, 2 I.C.C. Motor Carrier Cases 155, 159 (1937).

IV. The construction placed upon a statute by the body charged with its enforcement, and which has long obtained in practical application, will generally be accepted by the courts.

Logan v. Davis, 233 U.S. 613, 627; 63 F.—2d 472, 476; 54 F.—2d 122, 126.

The definition of the term "carrier" in the Railway Labor Act is this:

> "The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, * * *."

The history of the Labor Act confirms the position here taken that the definition of the term "employer" in the Retirement Act is taken from the definition of "transportation" as found in the Interstate Commerce Act. It is further clear from the history of the Labor Act that it is the intent of that Act to restrict the use of the words "receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad" to services which the railroad itself is obligated to perform. And these words in the Retirement Act are exactly the words in the Labor Act except for a change of "and" to "or" before the word "handling".

That the foregoing is true is shown by the following extracts from the hearings on amendments to the 118 Labor Act before the Senate and House in 1934. In the House the following is from the testimony of Commissioner Eastman—Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, on H.R. 7650, May 22-25, 1934, pp. 16-17:

> "I call attention in the first place to the fact that section 1 contains definitions. The present Railway Labor Act contains a definition at the outset of the term 'carrier', which has been subject to some doubt. I do not think it has ever been fully decided just what is covered by the definition of 'carrier' in the act as it now stands. In this bill, H.R. 9689, the definition provides that the term 'carrier' shall include any express company, sleeping-car company, carrier by rail-

road, subject to the Interstate Commerce Act; and then goes further and includes

> 'any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier".'

"Now, summing that up, it includes with those carriers subject to the provisions of the Interstate Commerce Act, i. e., all railroad companies and express companies and sleeping-car companies, and all companies which are directly or indirectly owned or controlled by the railroads and which perform service or furnish facilities in connection with transportation service performed by the railroads, and the definition includes words descriptive of such transportation service which are taken from the provisions of the Interstate Commerce Act.

"Now I should mention an amendment which has been suggested at that point: In line 4 on page 2, it has been suggested that after the word 'transportation' there should be inserted the words 'of passengers or property by railroads' and then go on with the words 'receipt, delivery, elevation,' and so forth.

"I see no objection to that amendment. The language as drawn refers to transportation of property, and this amendment is intended to make it clear that transportation of passengers is also to be included."

119. In the Senate the testimony of Commissioner Eastman was this—Hearings before the Committee on Interstate Commerce on S. 3266, April 10-19, 1934, pp. 10-11:

"In the paragraph of section 1 marked 'First', there is a change in the present definition of the term 'carrier.' This change is intended to bring within the scope of the act operations which form an integral part of railroad transportation, but which are performed by

companies which are not now subject to the Railway Labor Act. The most important illustration is found in the refrigerator-car companies, which own refrigerator cars operated by the railroads and perform certain functions connected with refrigeration service. Another illustration is found in the companies to which railroads have on occasion contracted out their maintenance work on equipment and even on way and structures. The thought is that concerns which function in this way as an integral part of the railroad transportation system should be subject to the same duties and obligations with respect to labor controveries as the railroads themselves and as the express and sleeping-car companies. This object is attained by including in the definition of 'carrier' any company 'operating any equipment or facilities or furnishing any service included within the definition of the terms 'railroad' and 'transportation' as defined in the Interstate Commerce Act.' Perhaps a better way can be found of accomplishing the desired result, but it was thought that this language would serve the purpose.

"I may say that in reading that over last night I am not sure the language does cover all companies to which railroads on occasion have contracted out their maintenance work, and it perhaps should be examined rather carefully from that point of view.

"The Chairman. I am impressed with the fact that instead of defining the terms in this bill you have defined them as defined in some other bill.

"Mr. Eastman. Yes.

"The Chairman. That is rather poor legislation, isn't it, generally?

"Mr. Eastman. Well, the definitions in the Interstate Commerce Act are, of course, definitions of long standing.

120 "The Chairman. I am not objecting to it; I am wondering if they should not be written into this bill.

"Mr. Eastman. That might, perhaps, be better. Some paraphrasing would have to be done if that were done in that way.

"The Chairman. The very fact it would have to be done is a reason that it should be done. If you define the terms of one act by another act, everybody has to dig it up.

"Mr. Eastman. I am not sure the language as it stands does cover all that it is intended to cover. I shall be glad to give it further consideration, and to indicate later any changes which I think ought to be made."

* * * * *

"Mr. Eastman. I shall discuss, first, the amendments to S. 3266 which have been proposed by the railroads.

"Section 1, paragraph first: The railroads wish to strike out the words 'any company' in line 10 of page 1. This amendment would confine the bill to the employees of express companies, sleeping-car companies, and railroads. It would eliminate companies, like refrigerator-car companies, which operate facilities or furnish service forming a part of railroad transportation. Most of the illustrations given by Mr. Clement to support his objections to the words 'any company' relate to construction work. The language in the bill would not cover outside companies engaged in such work for the railroads, as I read it. He is right in believing that it would cover trucking companies performing terminal service for the railroads. However, he approves of the wording of the present act, and that includes 'other transportation facilities used by or operated in connection with any such carrier by railroads'. It is plainly broad enough to cover terminal trucking.

"The Chairman. As I recall it, he claimed that it would affect their building of bridges and affect their contracts for all kinds of work. Is that your understanding of the definition?

"Mr. Eastman. Well, as I read the definition in the bill, as I have said here, I do not think it would cover such construction work. However, I am about to propose an amendment.

121 "While I believe that the railroad objections are largely without basis, the chairman has made a valid criticism of the definition of 'carrier' now in the bill, because it requires reference to another act. I can also see difficulties in bringing in trucking operations and certain other operations performed for railroads by outside companies, because of possible conflicts with

N.R.A. codes. It is difficult to know just where to draw the line. I am inclined to believe that for the present it would be well not to go beyond carriers and their subsidiaries engaged in transportation. So changed, the definition would read:

> 'The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company, which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad.'

"That, I may say, is some of the language in the Interstate Commerce Act.

"The Chairman. Is there some difference however? Isn't this reference here to parent, subsidiary, and affiliated, new?

"Mr. Eastman. Yes. I am confining this now to the railroad subsidiaries because of the possible conflict with N.R.A. codes if we get into the outside field. Going on with that—

> 'and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such carrier.'" pp. 145-6

122

OFFICE OF THE PRESIDENT
PENNSYLVANIA STATION,
PITTSBURGH, PA.,

December 15, 1939

Re: Railroad Retirement Act
Duquesne Warehouse Company

Mr. Murray W. Latimer, Chairman
Railroad Retirement Board
Washington, D. C.

Dear Sir:

Under date of May 23 last, Mr. Schoene, your General

Counsel, addressed a letter to Mr. E. W. Smith, President, in which letter your General Counsel expressed the opinion that the Duquesne Warehouse Company is an employer within the meaning of Section 1 (a) of the Retirement Act. Subsequent to that, and on September 15 last, and in protest against the opinion of Mr. Schoene, I appeared at the offices of the Retirement Board in Washington before Mr. Reed and Mr. Eddy, members, and Mr. Schoene, General Counsel. You were absent from Washington at the time.

At that meeting I fully explained the grounds for the position of the Warehouse Company that it is not an employer under the terms of either of the Railroad Retirement Acts, and in support submitted a memorandum setting forth in details the reasons for the position of the Warehouse Company. At the same time I filed with the Board a questionnaire, together with amended answers of the Warehouse Company to the same, and also a letter in explanation. It has been assumed that the matter is under the consideration and advisement of your Board.

The object of this letter is in further protest against the opinion of your General Counsel; and is to request that in the event the conclusion of the Retirement Board should be adverse to the position of the Warehouse Company, and in that event before any final determination or ruling or action shall be made or taken by the Retirement Board contrary to the position of the Warehouse Company the Warehouse Company be accorded full opportunity to present its case, to the end that a complete and adequate record may be fully developed.

Very truly yours

GEORGE R. ALLEN
George R. Allen
Counsel

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123

Jan 3 1940

Mr. George R. Allen, Counsel
Duquesne Warehouse Company
Pennsylvania Station
Pittsburgh, Pennsylvania

Dear Sir:

Receipt of your letter of December 15, 1939 is acknowledged. You request that, in the event that the determination of the Board on the status of Duquesne Warehouse

Company should be adverse to your contentions, Duquesne Warehouse Company be given further opportunity to submit evidence.

You can readily appreciate that orderly processes of administration are not promoted by the making of a determination that is expected to be reconsidered in the light of further evidence proffered after the determination. On the other hand, it is desirable that a determination be made on the fullest record known to be available.

Therefore, although the request to submit further evidence comes late, you are now allowed twenty days from the date of this letter in which to submit further evidence pertinent to the status of the Duquesne Warehouse Company and its employees.

Very truly yours,

MURRAY W. LATIMER
Chairman

124 BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS

Freight Handlers, Express and Station Employes

Domestic Freight Forwarding System Board of Adjustment

Cincinnati, Ohio.
January 5th, 1940.

Mr. L. M. Eddy, Member
Railroad Retirement Board,
Washington, D. C.

Dear Sir:—

There is at Pittsburgh a warehouse company known as the "Duquesne Warehouse Co." owned and controlled by the Pennsylvania Railroad whose employees are under the jurisdiction of our Brotherhood. Upon making some investigation at the local Railroad Retirement Board to find out why these employees were not considered under jurisdiction of the Railroad Retirement Act, we were advised by your local officers that the Duquesne Warehouse Co. is under the jurisdiction of the Railroad Retirement Board but as far as is known by me no deductions have been made from the pay of the employees by the management

for Railroad Retirement benefits and they are not so considered by the company.

Could you be so kind as to check into this matter and advise me the result of your investigation and any order that you might issue covering these employees?

Yours very truly,

C. H. BIER
General Chairman.

CHB/SS
CC: Mr. M. P. Sullivan

125 Jan 22, 1940

Mr. George R. Allen, Counsel
Duquesne Warehouse Company
Pennsylvania Station
Pittsburgh, Pennsylvania

Dear Sir:

As requested in your telephone conversation with Mr. Reed, you have been granted until February 15, 1940, to submit further evidence pertinent to the status of the Duquesne Warehouse Company and its employees.

Very truly yours,

MURRAY W. LATIMER
Chairman

126 Feb 5 1940

Dear Sir:

Reference is made to your letter of January 5, 1940, inquiring as to the status of the Duquesne Warehouse Company under the Railroad Retirement Act. You state that local officers of the Board have advised you that the company is under the Act, but that "so far as is known by me no deductions have been made from the pay of employees by the management for Railroad Retirement benefits and they are not so considered by the company."

On May 23, 1939, Mr. Lester P. Schoene, the Board's General Counsel, advised the company that, in his opinion, the company is an "employer" under the Railroad Retirement Act as a company owned and controlled by a "carrier employer" under the Act (the Pennsylvania Railroad Company) and engaged in the performance of certain services in connection with the transportation of property by rail-

road. Subsequently, the company protested the ruling, contending that it is not an "employer" under the Act, and that its employees are not "employees," within the meaning of the Act, of the Pennsylvania Railroad Company. In support of its protest, the company has submitted to the Board a memorandum on the company's status, and, at the company's request, it has been given until February 15, 1940, to submit such further evidence as it deems pertinent in the matter. After such materials have been furnished the Board, a determination will be made by the Board of the company's status on the basis of all the materials before it.

If in this connection, you desire to submit any data bearing on the status under the Railroad Retirement Act of the company and of its employees, such data will be given careful consideration by the Board in its formulation of an opinion in the case. In any event, you will be promptly advised of any determination made by the Board as to the status of the company and of its employees.

Very truly yours,

LEE M. EDDY

Mr. C. H. Bier, General Chairman
Domestic Freight Forwarding System
Board of Adjustment
Brotherhood of Railway and Steamship Clerks
Railway Clerks Building
Cincinnati, Ohio

127 BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS

Freight Handlers, Express and Station Employes

Domestic Freight Forwarding System Board of Adjustment

Cincinanti, Ohio.
February 7, 1940.
File 4-10-57

Mr. L. M. Eddy, Member
Railroad Retirement Board,
Washington, D. C.

Dear Sir:—

This will acknowledge receipt of your letter of Feb. 5th

advising of the present status of the *Duquesne Warehouse Co.*, Pittsburgh, as regards their coverage by the Railroad Retirement Act.

In my dealings with this company in negotiating rules and wage agreements covering its employees, and in handling disputes arising under our Agreements, it has been no secret that this company is owned, operated, and controlled by the Pennsylvania Railroad. According to information furnished me, Mr. E. W. Smith, who is Vice President of the Pennsylvania Railroad at Pittsburgh, is also President of the Duquesne Warehouse Co. and all wage and rules negotiations pertaining to the employees of the Duquesne Warehouse Co. are handled with the executive officers of the Pennsylvania Railroad in Pittsburgh as well as any disputes of any moment.

I give you this information for any use it may be to you in making your determination.

Yours very truly,

C. H. BIER
General Chairman

CHB/SS

128 DUQUESNE WAREHOUSE COMPANY

Office of the President
Pennsylvania Station,
Pittsburgh, Pa.,

February 14, 1940

Re: Railroad Retirement Act.
Duquesne Warehouse Company

The Honorable Murray W. Latimer
Chairman
Railroad Retirement Board
Washington, D. C.

Dear Sir:

In response to your letter of the 3rd ult. in this proceeding, time subsequently extended in your favor of the 22nd ult., I beg to say that enclosed herewith you will find statement of facts and memorandum of law in support of the position of the warehouse company that it is not an employer within the terms of the Railroad Retirement Act. The facts appearing in the statement of facts can be substantiated by competent proof. It is accordingly requested

that this statement of facts be made a part of the record in this proceeding. If the Board, however, is not willing to accept this statement of facts as the facts in the proceeding, then it is requested that before any ruling be made by the Board or order entered by the Board which may be adverse to the position taken by the warehouse company, a hearing be had to the end that a complete record in stenographic form may be had in the proceeding.

Very respectfully,

GEORGE R. ALLEN
George R. Allen,
Counsel

gra-h

129 Before The

RAILROAD RETIREMENT BOARD

Duquesne Warehouse Company

Transmitted with
letter of Feb. 14, 1940
from George R. Allen

Statement of Facts and Memorandum of Law in Support of the Position of the Warehouse Company That It Is Not An Employer Under the Terms of the Railroad Retirement Act.

Under date of May 23, 1939, the General Counsel of the Railroad Retirement Board addressed a letter to Mr. E. W. Smith, President, Duquesne Warehouse Company, in which it is stated that the warehouse company is an employer within the meaning of Section 1 (a) of the Railroad Retirement Act. Thereafter, by arrangement and on September 15, 1939, counsel for the warehouse company appeared before the Retirement Board, two members being present and also the General Counsel of the Retirement Board, and set forth the position of the warehouse company that it is not an employer under the terms of the Retirement Act. Counsel for the warehouse company at that time filed with the Board its memorandum in support of its position. It filed also its letter of September 15, 1939 enclosing the Board's questionnaire, Form IQ-2-C, with answers made by the warehouse company, this questionnaire and answers to be used, as stated in the letter, in substitution for the

questionnaire and answers previously submitted at the request of the Board, and this because, as stated in that letter, the wording in the previous form of the Retirement Board was not sufficiently clear to be properly understood. A copy of that letter and of the amended questionnaire and answers are here attached, marked Exhibits A and B, respectively, and made a part hereof. The warehouse company has received no communication from the Retirement Board as a result of that presentation.

Thereafter, and on December 15, 1939, counsel for the warehouse company wrote to the Chairman of the Retirement Board in protest against the conclusion of its General Counsel reached in his letter of May 23, 1939, and asked that the warehouse company be afforded full opportunity to present its case before any final determination of the Board if adverse to the position taken by the warehouse company. A copy of that letter is attached, and marked Exhibit C, and made a part hereof. The reply of the Chairman of the Retirement Board granted permission for the submission of further evidence pertinent to the status of the warehouse company and its employees. In response, this statement of facts and accompanying argument are submitted; and it is respectfully requested that the statement of facts be made a part of the record in this proceeding.

130 THE FACTS

The letter of the General Counsel of the Retirement Board asserts that the warehouse company is an employer within the meaning of the Retirement Act because the services which it performs are those in connection with the receipt, delivery, storage or handling of property transported by railroad. The language is this:

> "Since at least January 1, 1935, Duquesne has engaged in the unloading, storage, reloading, and handling of property in transit on Pennsylvania performed under arrangements made by Duquesne with shippers and consignees. Such services are undertaken under Pennsylvania Tariffs at Pennsylvania's East Liberty and Pittsburgh, Pa. freight stations in space at those stations leased to Duquesne by Pennsylvania. During the period August 1937 to May 1938, similar services were performed at Erie, Pa., under

Pennsylvania tariffs. Duquesne stands ready to resume its services at Erie when the need arises. Clearly, the services described are, as you state, in connection with the receipt, delivery, transfer in transit, storage or handling of property transported by railroad. See General Counsel's opinion on *The Long Dock Company* and cases therein cited. Payments for such employer services constitute approximately 57, 23, and 30 per cent of Duquesne's total operating revenues in the years 1936, 1937, and 1938.

"Other operations of Duquesne regularly performed for shippers and consignees since at least August 28, 1935, to include the receipt from Pennsylvania, the delivery to Pennsylvania and the loading and unloading of carload freight transported or to be transported by Pennsylvania. Except for loading and unloading the same services are performed for less than carload shipments. Such operations constitute services performed in connection with the receipt, delivery, storage or handling of property transported by railroad. General Counsel's opinion No. 1939 R.R. 4 on *Baltimore Fidelity Warehouse Company*."

The Duquesne Warehouse Company is a corporation of the Commonwealth of Pennsylvania, chartered "for the purpose of conducting a storage and warehouse business". It does a commercial warehouse business in Pittsburgh, Pa., at two locations—one at East Liberty which is in Pittsburgh, and the other in Pittsburgh proper. It issues warehouse receipts pursuant to the Warehouse Receipts Act of Pennsylvania—Act of 11 March 1909, P.L. 19. Photostat copies of two such receipts, one negotiable and the other not, are attached, and marked Exhibits D and E, respectively, and made a part hereof. Its stock is owned by The Pennsylvania Railroad Company.

131 Its operations are confined to two warehouses, one at East Liberty and the other at Pittsburgh. Both warehouses are owned by the railroad company and leased to the warehouse company with the exception of a portion of each building on the ground floor which is retained by the railroad company and used and officially designated by the railroad company as its freight agency. The railroad company maintains an agency force at each. These stations are fully equipped with tracks and other facilities for

the receipt, delivery and handling of inbound freight and outbound, both carlot and less. The operations of each are separate from the operations of the warehouse. Each warehouse has a siding where delivery is made by the railroad company in carlots to the warehouse company. The owner unloads. The warehouse company performs the work and charges the owner. On outbound carload shipments the owner loads on the same siding. The warehouse company does the work and charges the owner. On inbound deliveries and outbound shipments of less than carload freight such delivery and receipt are made and given by the railroad agency at the warehouse. Inbound the warehouse company takes the freight from the railroad platform, and outbound delivers it at the railroad platform. It receipts to the railroad inbound, and takes a railroad bill of lading outbound.

At East Liberty the only commodity handled by the warehouse company is sugar in carlots, although the agency of the railroad company at that point is open for the receipt and delivery of all freight, carload and less. The sugar is in packages. It comes into Pittsburgh by rail transportation, originating at the seaboard—New York, Philadelphia and Baltimore. It moves under regular bills of lading of the rail carrier. It is consigned to the owner, a sugar company, care of the Duquesne Warehouse Company. The warehouse company is the consignee. A typical form of such a covering bill of lading is hereto attached and marked Exhibit F, and made a part hereof. Delivery is made to the warehouse company in placing the car on the siding of the warehouse company. The railroad has then completed its transportation. The freight money is prepaid. The warehouse is used by the owner of the sugar as a distributing point. The packages are assembled in number and size to meet the requirements of the owner's trade. Outbound shipments are made by the owner and in its name. The sugar that went in is the sugar which goes out but assembled differently. A typical bill of lading covering such a movement is attached and marked Exhibit G, and made a part hereof. Inbound and outbound the sugar is carried by the railroad at carload rates. In the case of inbound shipments the owner unloads the sugar, and on outbound shipments loads the same, the work of unloading and loading being performed by the warehouse company for the owner.

This loading and unloading is required by Rule 27, Section 1 of the governing tariff, being Consolidated Freight Classification No. 13, and reading as follows, there being no exception as provided in the rule:

132 "Owners are required to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by rail carriers, carried at C. L. ratings or rates, except where the tariff of the carrier at point of origin or destination or stopover station (as the case may be) provides for the loading or unloading of C. L. freight by carrier."

While the freight is in the warehouse it is under the exclusive control and direction of the owner. The responsibility of the warehouse company in the custody of the sugar is that of a warehouseman. There is no responsibility of the railroad company. All services accorded the sugar, such as loading, unloading, storing, ventilating, drying, moistening, packaging and assembling, are performed by the warehouse company at the direction of the owner, and charges for such services are billed by the warehouse company against the owner and paid by it.

The appropriate tariff of the railroad company carries a transit privilege on sugar in carloads at East Liberty. That is, sugar in carloads transported by the railroad company to consignees at East Liberty may be there delivered to the consignees at the local rates, and if and when subsequently shipped out via the same railroad is entitled to be charged the through rate from first point of shipment to ultimate destination. For instance, assume that the shipment initially moves from New York to East Liberty, is delivered to consignee, is kept in storage there by the consignee for a period of three months, then either the identical sugar or like tonnage is shipped by the consignee to Chicago. Assume further, that the rate from New York to Chicago per 100 pounds is 90c, while the rate from New York to Pittsburgh is 50c, and the rate from Pittsburgh to Chicago is 50c. On the movement from New York to Pittsburgh the local rate of 50c is charged and paid. But on the outbound movement from Pittsburgh, because of the transit privilege, the through rate from New York to Chicago applies, and the shipper pays 40c additional only. There, of course, are certain policing rules, primarily to make sure that no more tonnage goes out than comes in.

The lower rate is the advantage, and is the chief factor in this transit privilege. The tariff covering the privilege is P.R.R. I.C.C. 100, the pertinent part of which is photostated and marked Exhibit H, atached hereto and made a part hereof. The master tariff carrying the rules governing I.C.C. 100 is that of L. E. Kipp, Agent, No. 226-B, I.C.C. No. A-2725. A rule of that tariff of particular consequence here is Item 295 on page 16 and reading as follows:

133 "While the shipments are stored in transit under these rules their custody and possession as between carrier and the consignee or owner, shall be that of the consignee or owner."

The transit privilege of the railroad company is not particular to any one consignee. It is restricted to commodities and locations, but is open to all receivers of those commodities at those points. For instance, transit on sugar is accorded also at Chicago, Detroit, Fort Wayne and Indianapolis; on lumber at Cincinnati, Fort Wayne and Toledo; on dairy products at Cincinnati, Cleveland, Detroit and Indianapolis; on grain at Chicago, Cincinnati, Pittsburgh and St. Louis; and on iron and steel at Ambridge, Pa., Chicago and Logansport, Ind. And at East Liberty the transit privilege is accorded canned food stuffs in addition to sugar.

At its other warehouse in Pittsburgh proper, the Duquesne also conducts a commercial warehouse business but more diversified as to commodities. The business comes to the warehouse either by rail or by truck, chiefly by rail. Such trucking is not local. When coming by rail in carlots and less, the shipments are consigned to the owners care of the Duquesne Warehouse Company as at East Liberty. In the case of carlots, the cars are placed on the siding of the warehouse, and delivery is then and there made to the consignee. Unloading is done by the owner as required by the tariff, the goods being carrier at carload rates. In the case of less than carlot shipments the freight is unloaded by the railroad from cars to the platform of the agency, and there delivery is made to the warehouse company by the railroad and appropriate delivery receipt taken. In case of outbound carlot shipments the reverse is the case, the owner loading the shipments and taking from

the railroad bills of lading. In less than carload shipments the warehouse company delivers the property to the agent of the railroad company at the station, and the railroad company issues its bill of lading, loads the shipment into the car and moves it out. About 40% of less than carlot business moves out by truck.

The warehouse company sublets parts of the building to tenants who conduct their business there. They are chiefly manufacturing concerns or representatives of manufacturers. The warehouse company has nothing to do with any shipments delivered to them or shipped by them. The railroad treats them the same as any other patrons. The warehouse company also at the warehouse receives from the railroad company freight which has been damaged and refused. At that time the warehouse company takes entire possession of the freight, reconditions it, and sells it at private sale. In case the freight proves to be worth-
134 less, the warehouse company disposes of it. For these services the warehouse company charges the railroad company 10% of the gross proceeds of sale, with deductions for any necessary expenses in reconditioning and handling, and remits the balance to the railroad company. This is after the freight has finished its transportation and is turned over to the warehouse company for disposal by the railroad company in a separate and independent transaction.

Employees of the warehouse company are on the payroll of that company only, and are paid solely out of its funds. They are hired by the warehouse company and discharged by it. They are under no continuing or other authority from the railroad company to supervise and direct the manner of rendition of their services, and never have been. They come under the direction of the Superintendent of the warehouse company, who has full and unrestricted authority to conduct a commercial warehouse buisness in accordance with the charter of the company. These employees are not accorded free transportation by the railroad; they are not entitled to become members of The Pennsylvania Railroad Voluntary Relief Department, or of The Pennsylvania Railroad Employes Provident and Loan Association. Membership in the Relief Department is limited to employees or former employees of the railroad company; that in the Provident and Loan Association to

employees. They have never been regarded by the railroad company as its employees, nor by the warehouse company as other than employees of that company. The warehouse company has paid and is paying taxes under the Federal Social Security Act, Titles VIII and IX, and also makes contributions under the State Unemployment Compensation Law. And it collects from the wages of its employees the tax imposed by Title VIII of the Federal Social Security Act.

All freight delivered by the railroad company to the warehouse company or received by the railroad company from the warehouse company is carried at tariff rates which are subject to the Consolidated Freight Classification. A. H. Greenly's I.C.C.—O.C. 57, Section 1 of Rule 23 of that classification is this:

> "Carriers' agents must not act as agents of shippers or consignees for the assembling or distribution of C. L. or L. C. L. freight."

Section 1 of Rule 14 of the same classification is this:

135 "Carload ratings or rates apply only when a carload of freight is shipped from one station, in or on one car, except as provided in Rule 24, in one calendar day from midnight to midnight, by one shipper for delivery to one consignee at one destination. Only one bill of lading from one loading point and one freight bill shall be issued for such C. L. shipment. The minimum C. L. weight provided is the lowest weight on which the C. L. rating or rate will apply." No exception applies to the freight under consideration here.

The warehouse company files no tariffs with the Interstate Commerce Commission or any state commission. Nor is it a party to any tariff of any railroad company or other common carrier.

During a limited period in 1937-8 the warehouse company conducted a warehouse at Erie, Pa., and stored newsprint paper in carloads. The paper was handled in the same way as sugar is handled at East Liberty. The paper was consigned to the warehouse company at Erie, and delivery by the railroad was made on siding. It was shipped outbound to Pittsburgh in the same way. The owner unloaded inbound and loaded outbound. The railroad company had nothing to do with the paper after delivery inbound and before delivery outbound. Those were matters of the owner.

and the warehouse company. There is no warehouse business conducted now and has not been since the 1937-8 period.

In the valuation of properties of The Pennsylvania Railroad Company by the Interstate Commerce Commission—22 Valuation Reports—these warehouses are not classified as carrier properties.

ARGUMENT

The General Counsel of the Retirement Board in his opinion asserts that the services performed by the warehouse company are those in connection with the receipt, delivery, transfer in transit, storage or handling of property transported by railroad. This is the ground for his conclusion. In the opinion he refers to other opinions of his in *The Long Dock Company case* and the *Baltimore Fidelity Warehouse Company case*. In The Long Dock Company opinion it is stated that the elevator is owned by the Erie Railroad Company, and it can be gathered from the wording of that opinion that delivery of the grain to the consignee is made by the elevator for the Erie. 136 The Duquesne performs no such service for the Pennsylvania. The goods are consigned to the warehouse company, and the railroad itself makes delivery to the warehouse on its siding. In the *Baltimore Fidelity Company* opinion it is stated that at three stations in Baltimore the warehouse company acts as freight agent for the railroad company; and also that employees of the warehouse company solicit freight for the railroad company. Further, it is stated that they receive free transportation from the railway company for private use, and are subject to the medical rules prescribed by the Surgical Department of that company. Not one of these facts is applicable to the Duquesne. The opposite is true.

The letter of the General Counsel divides in two ways. The first is with respect to the storage of sugar at East Liberty, and the second, the general warehouse business at Pittsburgh proper. We answer each.

The facts are more completely set out in the statement of facts at the beginning of this memorandum. Shortly, it may be stated that at the East Liberty warehouse sugar only is handled in carlots. It is shipped by rail from New

York, Philadelphia or Baltimore. The owner and shipper is a sugar company whose name has been deleted from Exhibits F and G. The sugar is consigned to the owner care of the Duquesne. The warehouse is thus the consignee. *Merchants' Warehouse Co.* v. *United States*, 283 U.S. 501. This is true also under the Federal Bills of Lading Act where consignee is defined as "the person named in the bill as the person to whom delivery of the goods is to be made." And delivery to the care of party is a sufficient delivery by the carrier. *City National Bank of El Paso, Texas* v. *El Paso & N. E. R. Co., et al.*, 262 U.S. 695; *Philadelphia Tapestry Mills* v. *New England S. S. Co.*, 146 N.E. 777 (Supreme Judicial Court of Massachusetts).

On arrival at East Liberty the car is placed upon the warehouse company's siding, and delivery is then and there made by the railroad. The sugar is carried by the railroad at carload rates. Under Rule 27 of the governing classification set out in the statement of facts, the consignee loads and unloads. There is no exception in the tariff of the carrier. While the sugar is in the warehouse it is in the sole custody and possession of the warehouse. The warehouse company makes its own charges for any services accorded the property, such as loading, unloading, segregating, assembling or other handling. Those charges are paid to the warehouse company direct by the owner, and all directions as to those services come to the warehouse company from the owner. When the sugar is shipped out the empty car is placed on the siding by the railroad,
137 the owner loads as required by the same classification rule, and receives a bill of lading issued by the agent of the railroad. The property in and out is handled in the same way as any such shipments are handled with any other commercial warehouse, or any consignee or shipper where private siding receipt or delivery in carlots may be had.

While the sugar is being transported by the railroad it is entitled to a transit privilege. The movement may be broken at East Liberty, but the rate finally paid is that from shipping point to ultimate destination and not the combination of the locals. If the sugar does not move out, it pays the local rate into East Liberty and that ends the matter. But the transit privilege is not limited to one shipper or consignee. It is restricted to commodity and

locality. Any shipper or receiver of the commodity and at the locality may use the privilege. Nor is the privilege confined to sugar at East Liberty. A like privilege is available at other points on the lines of the railroad as more fully appears in the statement of facts. The fact is the transit privilege is only a rate matter.* While the goods are in the warehouse they are not in the custody of the railroad, and the tariff so expressly provides. And while they are in such storage there can be no service accorded them by the railroad.

"* * * By Rule 23 of the Consolidated Freight Classification, the carriers may not distribute carloads of freight in less than carload lots, nor assemble smaller lots into carloads. By Rule 14, the carriers confine their service with respect to carload shipments to one consignor and one consignee. The service rendered by appellants' warehouses in distributing and assembling package carload freight is thus one which a carrier is not authorized or permitted to render, even at its own public freight stations, and, if performed by it, would nullify its published rates for carload transportation service. See *New York, New Haven & H. R. R.* v. *Interstate Commerce Commission*, 200 U.S. 361, 26 S. Ct. 272, 50 L. Ed. 515."

Merchants' Warehouse Co. v. *United States, supra.*

The services performed by the warehouse company at Pittsburgh proper are the same as those at East Liberty except that the commodities are other than sugar, and both carload and less are handled. But as to carload freight inbound, it is consigned in the way that the sugar is consigned at East Liberty, and delivered by the railroad to the warehouse in the same way. As to outbound carload shipments, they are made by the warehouse company for the owner just as they are made at East Liberty. In 138 the case of less than carload inbound freight, delivery is made by the railroad to the consignee, the warehouse, at the freight station of the railroad, and on outbound freight the handling is the reverse. The warehouse gives the freight no handling until received by it from the railroad inbound or after delivered by it outbound to the railroad.

* *Central R. R. Co. of N. J.* v. *United States*, 257 U. S. 247.

I.

IT IS NOT AN OBLIGATION OF THE RAILROAD COMPANY TO FURNISH GENERAL STORAGE, EITHER ON ITS LINES OR OFF ITS LINES.

True, storage is a service included in the term "transportation" under the definition in the Interstate Commerce Act. But that means storage only incidental to transportation, as for instance, where goods are received and forwarding is withheld pending shipping instructions. Again, where goods reach destination, the consignee is notified, the period of free time expires, and the goods are not removed. Cases covering matters of this kind are the *Dettlebach case*, 239 U.S. 588, and the *Prescott case*, 240 U.S. 632. But it is not a part of the duty of the carrier to furnish general storage for the care of goods which have been transported by railroad.

"The efficient use of freight cars is an essential of an adequate transportation system. To secure it, broad powers are conferred upon the Commission. Compare *United States* v. *New River Co.*, 265 U.S. 533, 44 S. Ct. 610, 68 L. Ed. 1165; *Avent* v. *United States*, 266 U.S. 127, 45 S. Ct. 34, 69 L. Ed. 202; *United States* v. *P. Koenig Coal Co.* (No. 216, April 12, 1926), 270 U.S. 512, 46 S. Ct. 392, 70 L. Ed. 709. One cause of undue detention is lack of promptness in loading at the point of origin, or in unloading at the point of destination. Another cause is diversion of the car from its primary use as an instrument of transportation by employing it as a place of storage, either at destination or at reconsignment points, for a long period while seeking a market for the goods stored therein. To permit a shipper so to use freight cars is obviously beyond the orginary duties of a carrier. The right to assess charges for undue detention existed at common law. Now, they are subject, like other freight charges, to regulation by the Commission. Demurrage charges are thus published as a part of the tariffs filed pursuant to the statutes."

Turner, Dennis & Lowry Lbr. Co. v. *Chicago, M. & St. P. Ry. Co.*, 271 U.S. 259, 262 (1926).

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II.

THE SERVICES PERFORMED BY THE WAREHOUSE COMPANY ARE THOSE OF COMMERCIAL STORAGE ONLY, AND ARE NOT EMBRACED WITHIN THE MEANING OF THE TERM "EMPLOYER" IN THE RETIREMENT ACT.

In its annual report for the fiscal year ending June 30, 1938, the Retirement Board makes the flat statement that commercial storage and warehouse business is not employer service under the Act. This is from page 142 of that report:

> "Storage of property received for a carrier and awaiting transportation by the carrier, or awaiting delivery by the carrier following transportation, is an employer service; but performance of the usual commercial storage and warehouse business is not. Likewise, the operation of a grain elevator for the receipt of grain for transportation by railroad or for delivery of grain transported by railroad or for transfer of grain from one railroad to another for continued transportation is a service of the type covered; but doing the business of a general commercial elevator is not the performance of an employer service."

But nevertheless, the fact that the business of the warehouse company is that of commercial storage only, and also the clear denial of the Board just mentioned, the General Counsel of the Retirement Board concludes that the warehouse company is an employer within the meaning of Section 1 (a) of the Act, and grounds his conclusion on the statement that the services performed are those in connection with the receipt, delivery, storage or handling of property transported by railroad. With this conclusion we are not in accord. It is the position of the warehouse company that the services enumerated by the General Counsel are those which the railroad company itself is obligated to perform in the transportation of property by it, the railroad, and not those performed by another company after the property has left the possession of the railroad company. It would not be contended, we take it, that the services which the warehouse perform come within the meaning

of the term "employer" of the Retirement Act if the stock of the railroad company were not owned by the railroad company. But does ownership of the stock cast the services of the warehouse company into the category of railroad transportation even though physically they are entirely separate? Certainly not, because under the wording of the statute ownership is not enough. In addition, the service must be that kind of a service which the railroad company itself is obligated to perform in the transportation of the property.

140 There are three ways to reach the correct interpretation of the statutory definition now at issue. The first is from the legislative history of the Act. The second is the application by the Interstate Commerce Commission of similar language in the Commerce Act. And the third is the interpretation which the courts have placed upon that language in the Interstate Commerce Act.

III.

THE RETIREMENT ACT MUST BE CONSIDERED IN RELATION TO THE INTERSTATE COMMERCE ACT BECAUSE AS TO THE ISSUE IN THIS PROCEEDING THE LANGUAGE IN THE RETIREMENT ACT IS SO CLOSELY COUPLED WITH SIMILAR LANGUAGE IN THE COMMERCE ACT.

The definition under discussion in the Retirement Act is this so far as material:

> "(a) The term 'employer' means any carrier (as defined in subsection (m) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, ..."

It will more clearly appear from what follows that the above language as to services was taken from the Interstate Commerce Act which defines transportation as follows:

"'* * * The term 'transportation' as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported."

141 What the Retirement Act does is to define "employer" as any carrier subject to Part I of the Interstate Commerce Act, and couples with that any company directly or indirectly owned or controlled by the carrier and which operates any equipment or performs any transportation service as that term is defined in the Interstate Commerce Act in connection with the transportation of passengers or property by railroad. The words in the definition as to receipt, delivery, elevation, etc. are words used in connection with the property which is being transported by railroad. That, of course, means property which is in the course of rail transportation but which is being handled by another for the railroad. There are instances well known where some of these transportation services are not performed by the carriers themselves. *United States* v. *Fruit Growers' Express Co.*, 279 U.S. 363.

These particular services which are singled out by name are all coupled with the words "transported by railroad". In the Interstate Commerce Act, Sec. 1 (3), the term "railroad" is defined, and is this:

"'* * * The term 'railroad' as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. * * *"

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Nowhere in this definition are warehouses specifically mentioned. True, they are covered in the term "terminal facilities" where those terminal facilities are used as part of the railroad transportation. And those words "terminal facilities" are qualified by these: "of every kind used or necessary in the transportation of the persons or property designated herein." The definition throughout is limited to the property while the same is being transported by railroad. When the property is out of the possession of the carrier, in storage or otherwise, it is not in the course of railroad transportation. It may get back into railroad transportation, or it may not, but it is not there at the time. And it is significant to note that as a fact the charges of these outside warehouse companies are never filed with the Interstate Commerce Commission, and that Commission has never attempted to assume jurisdiction over the charges or practices of commercial warehouses. In fact, it has expressly disclaimed such jurisdiction, as will more fully appear in the following part of this memorandum.

142 The situation is this. Both the Interstate Commerce Act and the Railroad Retirement Act are based on transportation by railroad. The first covers persons and property, and the second persons. But they both relate to the same transportation. We have in the Commerce Act, Sec. 1 (3), a definition of the term "railroad": Under that definition the term includes bridges, carfloats, depots, yards, grounds, terminals, etc., but all used or necessary in the transportation of persons or property. In the same paragraph there is a definition of the term "transportation", and under that definition are included locomotives, cars, etc., and further, a specification of detailed services which go to make up this transportation. They are specifically enumerated: receipt, delivery, elevation, transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

In the Railroad Retirement Act an employer is defined as a carrier which is subject to Part I of the Interstate Commerce Act. That definition as to "carrier" takes with it the definition of the term "transportation" as found in the Commerce Act. So in framing the Retirement Act it was not necessary to enumerate the several transportation services, such as elevation, refrigeration or storage. But the framers of the Act did have knowledge, because it is com-

mon knowledge, of the fact that certain common carrier services are not performed by the railroads themselves. Such services, it is also well known, are accorded the property in the transportation by railroad. It was these railroad owned or controlled companies furnishing part of the railroad transportation which it was the obvious intention of the framers of the Retirement Act to include within the terms of that Act. In phrasing the language to include such companies, they are described as performing any service, with certain exceptions, in connection with the transportation of passengers or property by railroad. In the Retirement Act there is no definition in explicit terms as in the Commerce Act of the term "transportation". But the services enumerated are those found in the definition of the term "transportation" in the Commerce Act and are limited by the qualifying words "transported by railroad". How they got there next follows.

143 IV.

THE LEGISLATIVE HISTORY OF THE RETIREMENT ACT MAKES IT UNMISTAKABLY CLEAR THAT THE COMPANIES, ASIDE FROM THE CARRIERS, INTENDED TO BE COVERED IN THE ACT ARE THOSE WHICH OPERATE AS AN INTEGRAL PART OF RAILROAD TRANSPORTATION; AND THAT THE SERVICES ENUMERATED IN THE RETIREMENT ACT ARE THOSE WHICH THE CARRIERS THEMSELVES ARE OBLIGATED TO PERFORM.

A limited number of extracts from testimony at the hearings before the Congressional Committees makes the matter under discussion so clear that the question is forced to the front why the Retirement Board has felt justified in attempting to extend the coverage of the Act in this and other directions. We go to the Railway Labor Act first, and the hearings on Senate bill 3266, April 10, et seq., 1934. The bill was to amend the Railway Labor Act of May 20, 1926. The language of the bill defining the term "carrier" was this:

> "The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to

the Interstate Commerce Act, any company operating any equipment or facilities or furnishing any service included within the definition of the terms 'railroad' and 'transportation' as defined in the Interstate Commerce Act, * * *."

Clearly the services intended were those now found in the definitions of "railroad" and "transportation" in the Commerce Act. Mr. Eastman, then Federal coordinator of Transportation, had drafted the bill and was sponsoring it. At the hearing before the Senate Committee on Interstate Commerce, the chairman of the committee, Senator Dill, objected to the incorporating language, when he said, "If you define the terms of one act by another act, everybody has to dig it up." (p. 11) Mr. Eastman's testimony was this:

"In the paragraph of section 1 marked 'First', there is a change in the present definition of the term 'carrier.' This change is intended to bring within the scope of the act operations which form an integral part of railroad transportation, but which are performed by companies which are not now subject to the Railway Labor Act. The most important illustration is found in the refrigerator-car companies, which own refrigerator cars operated by the railroads and perform certain functions connected with refrigeration service. Another illustration is found in the companies to which railroads have on occasion contracted out their maintenance work on equipment and even on way and structures. *The thought is that concerns which function in this way as an integral part of the railroad transportation system should be subject to the same duties and obligations with respect to labor controversies as the railroads themselves and as the express and sleeping-car companies.* This object is attained by including in the definition of 'carrier' any company 'operating any equipment or facilities or furnishing any service included within the definition of the terms "railroad" and "transportation" as defined in the Interstate Commerce Act.' Perhaps a better way can be found of accomplishing the desired result, but it was thought that this language would serve the purpose.

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"I may say that in reading that over last night I am not sure the language does cover all companies to which railroads on occasion have contracted out their maintenance work, and it perhaps should be examined rather carefully from that point of view.

"The Chairman. I am impressed with the fact that instead of defining the terms in this bill you have defined them as defined in some other bill.

"Mr. Eastman. Yes.

"The Chairman. That is rather poor legislation, isn't it, generally?

"Mr. Eastman. Well, the definitions in the Interstate Commerce Act are, of course, definitions of long standing.

"The Chairman. I am not objecting to it; I am wondering if they should not be written into this bill.

"Mr. Eastman. That might, perhaps, be better. Some paraphrasing would have to be done if that were done in that way.

"The Chairman. The very fact it would have to be done is a reason that it should be done. If you define the terms of one act by another act, everybody has to dig it up.

"Mr. Eastman. I am not sure the language as it stands does cover all that it is intended to cover. I shall be glad to give it further consideration, and to indicate later any changes which I think ought to be made." (Italics supplied.) (pp. 10-11)

145 And again testifying on the same bill on a later date—April 19, 1934—Mr. Eastman said this:

"Mr. Eastman. I shall discuss, first, the amendments to S. 3266 which have been proposed by the railroads.

"Section 1, paragraph first: The railroads wish to strike out the words 'any company' in line 10 of page 1. This amendment would confine the bill to the employees of express companies, sleeping-car companies, and railroads. It would eliminate companies, like refrigerator-car companies, which operate facilities or furnish service forming a part of railroad transportation. Most of the illustrations given by Mr. Clement to support his objections to the words 'any company' relate to construction work. The language in the bill would not

cover outside companies engaged in such work for the railroads, as I read it. He is right in believing that it would cover trucking companies performing terminal service for the railroads. However, he approves of the wording of the present act, and that includes 'other transportation facilities used by or operated in connection with any such carrier by railroads'. It is plainly broad enough to cover terminal trucking.

"The Chairman. As I recall it, he claimed that it would affect their building of bridges and affect their contracts for all kinds of work. Is that your understanding of the definition?

"Mr. Eastman. Well, as I read the definition in the bill, as I have said here, I do not think it would cover such construction work. However, I am about to propose an amendment.

"While I believe that the railroad objections are largely without basis, the chairman has made a valid criticism of the definition of 'carrier' now in the bill, because it requires reference to another act. I can also see difficulties in bringing in trucking operations and certain other operations performed for railroads by outside companies, because of possible conflicts with N.R.A. codes. It is difficult to know just where to draw the line. I am inclined to believe that for the present it would be well not to go beyond carriers and their subsidiaries engaged in transportation. So changed, the definition would read:

146 "The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad.'

"That, I may say, is some of the language in the Interstate Commerce Act.

"The Chairman. Is there some difference, however? Isn't this reference here to parent, subsidiary, and affiliated, new?

"Mr. Eastman. Yes. I am confining this now to the railroad subsidiaries because of the possible conflict with N.R.A. codes if we go into the outside field. Going on with that—.

"'and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such carrier.'" (pp. 145-6) (Italics supplied)

Before the House Committee on Interstate and Foreign Commerce on May 22, 1934, there were two bills, H.R. 7650 and H.R. 9689, which latter in the interval had been favorably reported by the Senate Subcommittee. There the testimony of Mr. Eastman was this:

"Commissioner Eastman. Well, that is the bill that I will talk about this morning. This bill does not depart from the general principles of the present Railway Labor Act, but instead is designed to reinforce those principles and provide for their more effective application. It seeks not to overturn but to perfect what has been done.

"I call attention in the first place to the fact that section 1 contains definitions. The present Railway Labor Act contains a definition at the outset of the term 'carrier', which has been subject to some doubt. I do not think it has ever been fully decided just what is covered by the definition of 'carrier' in the act as
147 it now stands. In this bill, H.R. 9689, the definition provides that the term 'carrier' shall include any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act; and then goes further and includes

'any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier".'

"*Now, summing that up, it includes with those car-*

riers subject to the provisions of the Interstate Commerce Act, i. e., all railroad companies and express companies and sleeping-car companies, and all companies which are directly or indirectly owned or controlled by the railroads and which perform service or furnish facilities in connection with transportation service performed by the railroads, and the definition includes words descriptive of such transportation service which are taken from the provisions of the Interstate Commerce Act.

"Now I should mention an amendment which has been suggested at that point: In line 4 on page 2, it has been suggested that after the word 'transportation' there should be inserted the words 'of passengers or property by railroads' and then go on with the words 'receipt, delivery, elevation,' and so forth.

"I see no objection to that amendment. The language as drawn refers to transportation of property, and this amendment is intended to make it clear that transportation of passengers is also to be included." (Italics supplied.) (pp. 16-17)

This testimony shows clearly (1) that the companies intended to be included, other than carriers subject to the Interstate Commerce Act, were those which function as an integral part of the railroad transportation system; (2) that the services enumerated were those embraced in the term "transportation" as defined in the Commerce Act, and were intended to be so limited; and (3) that the intentions were those of an Interstate Commerce Commissioner charged with the duty of enforcing the Commerce Act.

148 And the words in the amended Railway Labor Act, as then passed and as we now have them, "receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property by railroad," are almost precisely the words appearing in the definition of "transportation" in the Commerce Act. The complete definition in the Railway Labor Act so far as here material is this:

"The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and

which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, * * *."

While the foregoing shows the services enumerated in the Labor Act as being taken from the Commerce Act, the next step is to the Retirement Act. That Act as is known was not drafted in the conventional way by committees of Congress. It was framed by the agreeing parties, and was sponsored before the committees of Congress by Mr. Harrison who represented the labor interests but spoke also for the carriers, since the parties were in agreement. He said in testifying before the House Committee on H.R. 6956, the Retirement Act in then bill form, this:

"Now section 1 might be referred to as the scope of the legislation. Section 1 makes the bill applicable to those that are defined in that section as employers. Now the employers defined in section 1 are express companies, sleeping-car company, or carrier by railroad that are subject to part 1 of the Interstate Commerce Act, and in addition thereto it is proposed to include as employers any company which may be directly or indirectly owned or controlled by the express company, the sleeping-car company, or railway company, or under common control by one or more of such companies, when those companies are engaged in the business of transporting passengers or property for the railroad, or other service that is a part of railway transportation, such as grain elevators, private car lines, refrigerator car companies, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of these previously identified employers which are, express companies, sleeping-car companies, or carriers by railroad." (p. 17)

149 And on the same Act before the Senate in bill form—S. 2395—his testimony was this:

"Mr. Harrison. In offering these amendments, I should like to say that the amendments have been agreed to by the railway management, by railway labor, and by the Treasury of the United States. We have inserted the amendments in the proper places,

and we have enough corrected copies of the bill to distribute to five or six of the members of the committee.

"The first of these amendments is as follows: On page 2, paragraph (a), strike out lines, 3, 4, 5, 6, 7, and 8, and also strike out the words 'trucking service' on line 9; and in lieu thereof, substitute the following [reading]:

> '(a) The term "employer" means any carrier (as defined in subsection (m) of this section) and any company which may be directly or indirectly owned or controlled by one or more of such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities).'

"The Chairman. What is the meaning of 'casual'?

"Mr. Harrison. Well, the railways occasionally employ a contractor to repair a depot or to build a bridge, or do some other work for them that ordinarily is carried on by the railway force. In that instance, we would not undertake to take in the force of the contractor, just because those men were doing occasional work for the railroad company.

"Senator White. These are services that are not ordinarily performed by the railroad company or by its employees?

"Mr. Harrison. That is true.

"The Chairman. Does this include busses operated by the railroads?

"Mr. Harrison. No. If the bus is operated by the railroad as a part of its transportation, then the workers on the bus would come under the proposed law. However, if there is a subsidiary bus or truck company, then it is subject to part II of the Interstate Commerce Act; and this bill applies only to part I of the Interstate Commerce Act—'such common carriers as are subject to part I of the Interstate Commerce Act.' And they are—

> 'any express company, sleeping car company, or carrier by railroad, subject to part I of the Interstate Commerce Act, and any company which may be directly or indirectly owned or controlled there-

by or under common control therewith, and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.'

"*In other words, part of the railroad plant.*

"Senator Davis. What trucking service do you except?

"Mr. Harrison. Well, you see the railroads recently have inaugurated store-door pick-up and delivery merchandise service, for merchandise freight. And that store-door pick-up and delivery service for merchandise freight is at the present time quite generally handled under contract by an outside trucking company.

"Senator Smith. And not by the regular employees of the railroad?

"Mr. Harrison. No. So therefore it only excludes a company that might be engaged in the transportation of property for the railroad, if that company is engaged in the business of trucking the freight; that means motor trucks.

"Senator Minton. Does it take in a company like the Greyhound Co.?

"Mr. Harrison. No; that comes under title II of the Interstate Commerce Act.

"The Chairman. But it says [reading]:

151 '(a) The term "employer" means any express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act, and any company which may be directly or indirectly owned or controlled thereby or under common control therewith.'

"Mr. Harrison. Yes; but that is qualified later on, Senator.

"The Chairman. I see; I was wondering if there was a qualification. I did not see any in that paragraph.

"Senator Minton. It says 'trucking service.'

"Mr. Harrison. Well, this is the statement [reading]:

'(a) The term "employer" means any express company, sleeping-car company, or carrier by rail-

road, subject to part I of the Interstate Commerce Act, and any company which may be directly or indirectly owned or controlled thereby or under common control therewith, and which operates any equipment or facilities or performs any service (other than trucking service)—'

"And then here is the qualification [reading]:

'in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.'

"Senator Johnson. I cannot find his subsection '(m)'; it goes only to (j).

"Mr. Harrison. It has been inserted, Senator; that is on page 6.

"Senator Brown. How about bus transportation? What provision is there for a bus line operated by a railroad, intrastate?

152 "Mr. Harrison. If the bus transportation is operated directly by the railroad company, as part of the railway's operation, then the employee engaged in the operation of the bus would be covered, as a railroad employee. We have such a situation in a few instances where the railroad companies have abandoned branch operations and have substituted motorbusses. But that motorbus is operated by the railroad. You buy your railroad ticket, and ride on the bus to the main line of the railroad, and then complete your trip in a railroad car on the main line of the railroad. On the other hand, if the bus is operated as a subsidiary operation, then that is excluded and comes under part II of the Interstate Commerce Act.

"Senator Brown. The Boston & Maine, in New Hampshire, has a bus company. The passengers on those busses get railroad tickets, and the busses are coordinated with the railroad line.

"Mr. Harrison. Well, they have an arrangement for supplemental service, but it is not part of the railroad operation.

"Senator Brown. They have formed a subsidiary corporation, and operate under that?

"Mr. Harrison. Yes.

"Senator Brown. Do you think the employees of that bus line would come under the provisions of this bill?

"Mr. Harrison. No; those employees would not. You see, when you get into the field of bus transportation, you have not only the subsidiary corporations of the railroads, but you have many privately owned bus companies. And in this instance we have proceeded with the thought that we had better not try to invade the motor-transportation field, but that we had better restrict ourselves to the railroad industry.

"Senator Johnson. The bus-transportation industry is only in its infancy, anyway; in the next few years it will probably call for an amendment of that kind.

"Mr. Harrison. Oh, in our experience we shall probably call for amendments, and the railroads probably will.

"Senator Johnson. And as the railroads get buses." (pp. 11-13) (Italics supplied.)

153 In the companion taxing act the definition of the term "employer" is exactly the same as that found in the Retirement Act except for reference to the enumerated subsection of the Interstate Commerce Act. In testifying before the House Committee on that Act, Mr. Harrison said this:

"Mr. Treadway. Then may I ask what is a fair illustration—I did not hear all of the interchange between you and Mr. McCormack—of where the language 'indirect' would come in?

"Mr. Harrison. For instance, they have elevator companies that handle the storage of grain. They may be indirectly owned or controlled by a railway company. It is a railway facility. But it is operated through a subsidiary organization. If they did not have the subsidiary organization, it probably would have its own grain elevator.

"This act covers those men. They may have a refrigerator car company. They may have a subsidiary organization handling some of their mechanical work; some of their accounting and collecting.

"For instance, in Chicago, Ill., they have a joint collecting agency. The railroads got together and organized a joint collecting agency. If that were incor-

porated and the stock were owned by a number of roads, that would come under the provision.

"The provision that is here under discussion, 'directly or indirectly owned or controlled' is a standard provision which Congress included in the Railway Labor Act and we are trying to include in this tax act the same coverage that is in the Railway Labor Act.

"Mr. Thompson. Would that cover the ferries in New York and 'Frisco harbors?

"Mr. Harrison. Yes; it would cover the ferries in New York and 'Frisco harbors, if they were directly or indirectly owned or controlled by railroad companies and if those ferries were engaged in the transportation of passengers or property in interstate commerce for the railway companies." (Italics supplied.) (H.R. 6448, p. 9).

154 The testimony of Mr. Harrison in the hearings on the Carriers' Taxing Act, 1937, shows in so many exact words that the coverage in that Act was intended to be the same coverage which is in the Railway Labor Act. The Taxing Act is an inseparable part of the Retirement Act. *Alton R. Co.* v. *Railroad Retirement Board*, 16 F. Supp. 955. And we have shown from the foregoing testimony that the coverage in the Railway Labor Act, in addition to the carriers themselves, was intended to be those companies owned or controlled by the carriers and which perform a service which is an integral part of railroad transportation, and further, that the services enumerated in the definition of "employer" in the Retirement Act are taken from the Interstate Commerce Act and are those which a carrier is obligated to perform in transportation by railroad, i. e., while the property is being transported by railroad. The coupling is complete.

V.

IN THE APPLICATION OF THE WORD "STORAGE" AS A PART OF THE DEFINITION OF THE TERM "TRANSPORTATION", THE INTERSTATE COMMERCE COMMISSION HAS REPEATEDLY HELD IT TO BE RESTRICTED TO THAT STORAGE WHICH IS INCIDENTAL ONLY TO TRANSPORTATION.

The first case is *Guaranty Claim of Central Elevator & Warehouse Co.*, 72 I.C.C. 169 (1922). That case arose under the guarantee provisions of the Transportation Act 1920. It was an application by the Illinois Central, and the question was whether the operations of the warehouse company could properly be considered as railway operations. There, as here, the railroad company wholly owned the Elevator and Warehouse Company; and there, as here, the Elevator and Warehouse Company was a public facility. But the Commission declined to hold that the storage in the elevator was storage under the definition of "transportation" in the Interstate Commerce Act. It said this:

> "The transportation act contains no general definition of 'railroad' or of 'transportation'. The railroad and warehouse companies point out, however, that both of these terms are defined in section 1 of the interstate commerce act. In that section the term 'railroad' is said to include, *inter alia*, 'all * * * terminals and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds used or necessary in the transportation or delivery of any such property,' and the term 'transportation' to
155 include 'locomotives, cars and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.' These definitions, placed together in the same section, are

interdependent one upon the other; without the definition of 'transportation' the definition of 'railroad' is incomplete. No definition of the term 'system of transportation' appears in either the transportation act or interstate commerce act, and the definition of 'transportation' in the interstate commerce act is of doubtful value as an aid in determining the meaning of 'system of transportation' as used in section 209 of the transportation act, 1920. It is quite obvious, however, that while certain of the services performed by the Central Elevator & Warehouse Company are incidental to transportation services, other of such services can not be so considered in any proper sense. The receipt and delivery of property are, of course, a part of a carrier's transportation service. Elevation and transfer in transit have frequenty been found by us and by the courts to constitute necessary steps in the transportation of various kinds of property. *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U.S. 42; *Union Pacific Railroad Company* v. *Updike Grain Company*, 222 U.S. 215.

"Storage of property transported is a transportation service only to the extent that storage is necessarily incidental to transporting such property, and the term has been used in section 1 in that limited sense. As was said by the court in *State* v. *Southern Pacific Company*, *supra*:

> 'We think that the storage of goods by a railroad in its warehouses, as a matter incidental to its business as such, contemplates and looks to a rotation of storage as immediate and prompt as the railroad corporation can make it. * * * To be incidental business, the storage must be preliminary either to immediate transportation or immediate removal.'

"The revenues of the warehouse company are derived on the one hand from elevation of grain and certain other services which properly pertain to transportation, and, on the other, from storage of grain
156 for hire for indefinite periods and other services which are not transportation services, and are not actually incidental thereto. But it seems beyond question that the activities of this company which give it character

and definitely establish its status are its storage or public-warehouse operations. Admittedly the reason for its incorporation was to enable it to store grain and issue storage receipts therefor. These things the railroad company could not lawfully do under the laws of Louisiana. Having been created for these particular purposes, the railroad company and its subsidiaries also turned over to it by lease agreements the services incidental to transportation, such as elevation and transfer in transit, which these carriers might have retained unto themselves. The fact that the railroad company guarantees payment of all expenses and obligations of every kind of the warehouse company and recaptures its excess earnings, if any, does not alter the outstanding fact that the railroad companies could not themselves lawfully carry on the storage or public-warehouse business that the warehouse company is doing."

And recently in its motor carrier decisions the Commission has held to the same effect.

"Some analogies may be helpful. By virtue of section 1 (3) of part I, services by rail carriers in connection with the storage of property transported are included within the term 'transportation', and thus 'come within the jurisdiction of the Commission.' Separate charges therefor must be shown in the tariffs of the carriers. The Commission has frequently decided controversies involving the reasonableness of such charges and discriminations and the like growing out of the rendering of the services. But the warehousing companies who perform the service are not carriers subject to part I (*Guaranty Claim of Central Elevator and Warehouse Co.*, 72 I.C.C. 169) even though wholly owned subsidiaries of a rail carrier. It would not be reasonable to assert that in the event the United States Warehouse Act (39 Stat. 486) regulating the operation of warehouses, had contained a provision subjecting such operations to the jurisdiction of the Secretary of Agriculture 'except to the extent that they are subject to the Interstate Commerce Act', all warehouses which furnished any service to rail carriers could escape the jurisdiction of the Warehouse Act merely

because of the fact that what they did for rail carriers was reflected in rail tariffs and passed on to the shipper as rail charges. Such a conclusion is not ten-
157 able, yet the situation seems on all fours with the one herein discussed. The same thing might apply as well to elevator service, icing service, wharfage, docking, and others."

Scott Bros., Inc., Collection and Delivery Service, 2 I.C.C. Motor Carrier Cases 155, 159 (1937).

And the construction placed upon a statute by the body charged with its enforcement, and which has long obtained in practical application, will generally be accepted by the courts. *Logan* v. *Davis*, 233 U.S. 613, 627; 63 F. 2d 472, 476; 54 F. 2d 122, 126.

VI.

THE CONSTRUCTION PLACED BY THE COURTS UPON LANGUAGE IN THE INTERSTATE COMMERCE ACT SIMILAR TO THE DEFINITION "EMPLOYER" IN THE RETIREMENT ACT IS CONTRARY TO THE CONSTRUCTION PLACED UPON THAT DEFINITION BY THE GENERAL COUNSEL OF THE RETIREMENT BOARD.

Section 15 (13) of the Interstate Commerce Act is that part of that statute which deals with allowances to the owner of property who "renders any service connected with such transportation". These particular words "connected with such transportation" have been construed by the courts. In *New York Central & H. R. R. Co.* v. *General Electric Co.*, 146 N. Y. Supp. 322, these words were under consideration by the trial court. That court said this:

"* * * I understand that the defendant urges that the wording of section 15, '*If the owner of property transported under this act directly or indirectly renders any service connected with such transportation or furnishes any instrumentality used therein*,' etc., includes this service in question; that the service for which the owner may receive compensation from the carrier under this provision need not be a part of the

transportation itself, but only connected with it. *I conclude, however, that the expression 'connected with' is a synonym of 'a part of'; it does not mean something, in addition to transportation, that touches, or is attached to, transportation.* A common carrier of property cannot include in its charge for transportation an item which is not a part of transportation, and it was not intended by said provision to require the carrier to pay for a service which it was not bound as a carrier of property to render and for which it could not charge. * * *" (Italics supplied.)

158 . That case was affirmed by the Court of Appeals where reference is made in its opinion to the "careful opinion of the court below". 219 N. Y. 227. Certiorari was denied, 243 U. S. 636.

Next is the case of *American Sugar Refining Co.* v. *D. L. & W. Ry. Co.*, 200 Fed. 652. There the court said this:

"The plaintiff's insistence is that such allowance is for a service in connection with the transportation of sugars, and is authorized by section 15 of such act, as amended by Act June 18, 1910, c. 309, sec. 12, 36 Stat. 551 (U. S. Comp. St. Supp. 1911, p. 1300). The pertinent part of such section is as follows:

> 'If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order; which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.'

"It will be noted that this section recognizes the right of the owner of property transported to receive a just and reasonable allowance, when he directly or indirectly renders any service connected with such transportation. The term 'transportation,' as defined

by section 1 of such act, includes 'all instrumentalities and facilities of shipment or carriage, * * * all services in connection with the receipt, * * * transfer in transit * * * and handling of property transported.' After so defining 'transportation,' said section provides:

> 'It shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor.'

"In a sense the sugars, in being drayed from the refinery to the railroad, were transported; but such transportation is not within the comprehension of such term as here legislatively defined. The draying service
159 here rendered is normally one that falls upon the shipper, and not the carrier, and could not be exacted from the latter. It will be observed that, while all the services included within this legislative definition of transportation normally fall upon the carrier, as a fact they could be rendered by the shipper; but it is clear that, as the act casts upon the carrier the duty to perform, upon request, what it defines as transportation, any services which could not be exacted from the carrier would not come within the meaning of 'transportation' thus defined, even though rendered by the shipper.

"The plaintiff does not contend that transportation begins at the factory, but insists that, while such draying may not be transportation, it is a 'service connected with' transportation, within the meaning of section 15; but the phrase 'service connected with' such transportation, as used in such section, can be given no more comprehensive meaning than the similar phrase 'service in connection with' the receipt of property to be transported, contained in section 1. The argument that at common law a common carrier, in the promotion of its business, could contract to dray the goods from the factory to its railroad is not helpful in this discussion. Many of the common-law rights of carriers have been taken away; and in the matter of making allowances for services rendered in connection with transportation it is perfectly manifest that the only services of the shipper that can be compen-

sated for by the carrier, under the statute, are such as are rendered by the shipper after the carrier's duty to take and transport the goods has begun. Draying of the kind under consideration necessarily precedes both the receipt and the transportation of the sugars by the railroad company. * * *" (pp. 655-6)

This case was reversed in 207 Fed. 743 but on other grounds. However, the particular point mentioned and the language used were approved in *Pennsylvania R. Co.* v. *M. McGirr's Sons Co.*, 287 Fed. 334, certiorari denied 262 U. S. 743, where the court said this:

"* * * Draying sugar from a refinery to the railroad, where it is transported in interstate commerce, does not constitute transportation or service connected with transportation, within section 15 of the Interstate Commerce Act (Comp. St. sec. 8583), but is an accessorial expense of the shipper. * * *" (p. 337)

160 It is a rule of statutory construction that when language found in one statute is enacted as part of a subsequent statute it should there receive the same interpretation. Nor is it essential that the enactment of the second statute should be in identical wording. Substantial sameness is sufficient. *Sessions* v. *Romadka*, 145 U. S. 29:

"* * * We think that section 4917 ought to be read in connection with section 4922, providing that the patentee may maintain a suit at law or in equity for the infringement of any part of the thing patented, notwithstanding the specifications may embrace more than that of which the patentee was the first inventor or discoverer; but in every such case in which a judgment or decree shall be rendered for the plaintiff no costs shall be recovered, unless the proper disclaimer has been entered at the Patent Office before the commencement of the suit. This was practically the construction given to corresponding sections of the act of 1837 by this court in *Smith* v. *Nichols*, 21 Wall. 112; and of the Revised Statutes in *Dunbar* v. *Myers*, 94 U. S. 187, 193. Under section 4922 the effect of delaying a disclaimer until after the commencement of the suit goes only to the recovery of costs. We adhere to that construction. Congress, having in the Revised Statutes adopted the language used in the act of 1837, must be

considered to have adopted also the construction given by this court to this sentence, and made it a part of the enactment." (pp. 41-2)

See also *Kendall* v. *Garneau*, (Neb. 1898), 75 N. W. 852.

FOR THE REASONS ABOVE APPEARING, IT IS CLEARLY DEMONSTRATED THAT THE OPINION OF THE GENERAL COUNSEL OF THE RETIREMENT BOARD IS IN ERROR AND SHOULD NOT BE ADOPTED BY THE RETIREMENT BOARD.

Respectfully submitted,

DUQUESNE WAREHOUSE COMPANY,
By GEORGE R. ALLEN
George R. Allen,
Counsel

14 February 1940

161 APPENDIX

This appendix contains definitions of the terms "railroad" and "transportation" from the Interstate Commerce Act; and also so far as here material definitions of the term "employer" from the Railway Labor Act of 1934, the Railroad Retirement Act of 1937, and the Carriers' Taxing Act of 1937.

INTERSTATE COMMERCE ACT

"* * * The term 'railroad' as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term 'transportation' as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, ex-

press or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported."—Sec. 1(3) * * *.

RAILWAY LABOR ACT OF 1934

"The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, * * *."—Sec. 1(First) * * *.

RAILROAD RETIREMENT ACT OF 1937

"The term 'employer' means any carrier (as defined in subsection (m) of this section), and any company 162 which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, * * *."—Sec. 1(a) * * *.

CARRIERS' TAXING ACT OF 1937

"The term 'employer' means any carrier (as defined in subsection (i) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection

with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, * * *"—Sec. 1(a).

163. EXHIBIT D

DUQUESNE WAREHOUSE COMPANY No. 4692

Pittsburgh, Pa.....19...

Received in store at Warehouses, Barbeau Street and Duquesne Way,

From .....

.....

.....

.....

At owners risk of damage from fire, leaking, heating, freezing, sprinkler leakage, or from all other causes not attributable to want of ordinary care on our part. Deliverable only upon the order endorsed hereon of

.....

and the surrender of this certificate and the payment of all charges.

Storage Rates

Charges advanced $..... Section .....

Countersigned .....

.....

Bookkeeper.

DUQUESNE WAREHOUSE COMPANY.

By .....

Superintendent.

164 EXHIBIT E

DUQUESNE WAREHOUSE COMPANY No.....

Memorandum
Not Negotiable
Cancelled Feb 6 1940 Duquesne Warehouse Co.

Pittsburgh, Pa. .....191...

Received in store at Warehouses, Third Street and Duquesne Way,

.....

.....

.....

At owners risk of damage from fire, leaking, heating, freezing, or from all other causes not attributable to want of ordinary care on our part. Deliverable after the payment of all charges to

.....

Storage Rates
Charges advanced $..... Section .....
Countersigned .....

.....

Bookkeeper.

DUQUESNE WAREHOUSE COMPANY.

By .....

Superintendent.

EXHIBIT F

165

COPY

F. D. 2526 2000M 7-18-35 8½ x 7½

[1] Uniform Domestic Straight Bill of Lading, Adopted by Carriers in Official, Southern, Western and Illinois Classification territories, March 15, 1922, as amended August 1, 1930.

(Cut of P. R. R.)

UNIFORM STRAIGHT BILL OF LADING
ORIGINAL—NOT NEGOTIABLE

Shipper's No. C & H A 2797
Agent's No.

THE PENNSYLVANIA RAILROAD COMPANY

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

At Long Island City, N. Y., Aug. 9, 1939 From ---------- Company

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to ---------- Company % Duquesne Whse

Destination East Liberty State of Pa. County of

Route PENN RR - FOR STGE IN TRANSIT

Delivering Carrier Car Initial Penn. Car No. 78268

No. Pkgs.	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*Weight (Sub. to Cor.)	Class or Rate	Check Col.
	— SUGAR —			
400	Bags Con "AA" Multiwall	40400		

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not m e delivery of this shipment without pay nt of freight and all other lawful charg

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Prepaid

Received $.....
to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per .....
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$.....

THE PENNSYLVANIA RAILROAD
B'klyn E. D. Term'l
Aug. 9 — 1939
Boro. Brooklyn, N. Y.
T. P. Smith, Gen. Agt.
Per J. M. Kelly

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding ---------- per ----------

(1)9975c

---------- Company Shipper ---------- Agent

Per ---------- Per ----------

Permanent postoffice address of shipper Wall St., New York City

663974 O - 45 (Face p 170) No. 1

170

Duquesne Warehouse Company v.

EXHIBIT G

COPY

[1] Uniform Domestic Straight Bill of Lading, Adopted by Carriers in Official, Southern, Western and Illinois Classification territories, March 15, 1922, as amended August 1, 1930. F. D. 2526 2000M 7-18-35 6½ x 7½

(Cut of P. R. R.)

UNIFORM STRAIGHT BILL OF LADING
ORIGINAL—NOT NEGOTIABLE

Shipper's No. H74
Agent's No. _____

THE PENNSYLVANIA RAILROAD COMPANY

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

At East Liberty Pa 1/31/40 193——From _____ Company

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destintaion, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to _____ Company (Mail or street address of consignee—For purposes of notification only.)

Destination Youngstown State of Ohio County of

Route PRR

Delivering Carrier Car Initial PRR Car No. 50492

No. Pkgs.	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*Weight (Sub. to Cor.)	Class or Rate	Check Col.
75	Bags Sugar 100 # Berry W. C.			
10	Bags " 100 # Golden C Blp P/1			
15	Bags " 100 # Powdered Blp			
40	Bags " 25 # Berry Paper			
40	Bags " 25 # Golden C Blp P/L			
20	Bags " 25 # Powdered Blp			
75	Bales " 4/25 Berry Blp			
75	Bales " 10/10 Berry			
75	Bales " 20/5 Berry			
50	[illegible]			
10	Cart " 25/2 Berry			
75	Cart " 24/1 Powdered	40966 #		

transit record #1284 PENNSYLVANIA SYSTEM

accorded transit privilege at East Liberty, Pa. Received Jan. 31 1940

A. D. CAMLIN

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or

Prepaid

Received $ _____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____ (The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$ _____

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per _____

9975c

_____ Company Shipper _____ Agent

Per Duquesne Warehouse Co. Per _____

Permanent postoffice address of shipper — Wall Str N Y City

EXHIBIT H

167

Fourteenth Revised Page 384
Cancels
Thirteenth Revised Page 384

Section No. 23 — THE PENNSYLVANIA RAILROAD COMPANY

I. C. C. 100 · I. R. C. 10 · Ill. C. C. 15 · M. P. S. C. 10 · Pa. P. U. C. 50 · W. Va. 20 · Ohio 15

RULES GOVERNING TRANSIT PRIVILEGES ON SUGAR, CARLOADS, AT STATIONS SHOWN ON

Rule No.	SUBJECT	EXPLANATION
V-1	**Definition.**	(a) Storage in transit privileges on Sugar will be permitted at station 383 when shipped and handled in conformity with the rules and regulat Tariff 226-B, I. C. C. A-2725, issued by L. E. Kipp, Agent, also rules 5, 3 145 and 150 of this tariff. (b) Transit privilege, as defined in the rules, will also permit the preserve its commercial condition for the prevention of caking, lumping, etc., and in the process of grinding, any loss in weight, but not exceeding five percent (5%) may be replaced by an equal amount of Corn Starch. (c) The rules announced herein will only apply on shipments destined to points beyond the switching district of transit points. Rules announced herein also will not apply on shipments destined to or moving through points in Southern Freight Association territory as defined in Rule 150. ①Applies only at Cleveland, Ohio, Detroit, Mich., East Liberty, Pa., Pittsburgh, Pa., and Toledo, Ohio.
V-2	**Time Limit.**	The period of time allowed for transit privilege will be twelve (12) months from the date of unloading into the transit house. At the expiration of the time limit transit privilege shall absolutely cease and the applicable rates to and from the transit point will apply. **Exception.**—On shipments originating in Central Freight Association Territory, as described in Rule 165, period of time allowed for transit privilege will be eighteen (18) months from the date of unloading into the transit house.
V-3	**Transit Charge.**	Cancel.
V-4	**Transit Rate.**	By transit rate is meant the lawfully published rate through from the original point of shipment or point of importation (as the case may be) to the reforwarded destination beyond the transit point in effect via the transit point and route of movement at the time of initial shipment from point of origin or point of importation (as the case may be) applicable to the sugar covered by inbound billing which does

1	Stations in Trunk Line and New England Territories, as defined in Rule 150; also stations in Carolina and Southeastern Territories, as defined in Rule 150, received from connections at Potomac Transfer.	P. R. R. Pittsburgh, P. R. R.	Pittsburgh, Pa., where the through rates apply via Pittsburgh, Pa., including stations on the P. R. R. from Houston Jct. to New Castle, Pa.; also stations on the P. R. R., between Pittsburgh (exclusive) and Butler, Pa. (inclusive), and stations on connecting lines beyond Butler, Pa.; also stations on the P. R. R. and Monongahela Railway between Pittsburgh, Pa. (exclusive) and Fairmont, W. Va. (inclusive) through McKeesport and Brownsville Jct., Pa., also stations on the P. & L. E. R. R. from East California to Homestead, Pa. (exclusive).
-2	Stations on the P. R. R. and connections west of Pittsburgh, Pa.	P. R. R. Pittsburgh, P. R. R.	Stations on the P. R. R. and connections east of Pittsburgh, Pa., where the through rates apply via Pittsburgh, Pa.
3	Baltimore ..... Md. Philadelphia ..... Pa. New York ..... N. Y.	P. R. R. Pittsburgh, P. R. R.	Stations on the P. R. R. from Kiskiminetas Jct. to Erie, through Oil City and Corry, Pa. Stations on the P. R. R. from Corry, Pa., to Buffalo, N. Y. (Applies from Baltimore, Md., only.)

663924 O - 45 (Face p. 170) No. 3.

168 Re DUQUESNE WAREHOUSE CO.

Facts found by M. R. Reed, Board Member, after personal investigation at Pittsburgh, Pa., and to be incorporated in the record.

The Duquesne Warehouse Company is not subject to Part I of the Interstate Commerce Act, and never has been subject to the Interstate Commerce Act or any part of it. It is not a common carrier under that Act and never has been. It files no tariffs with the Interstate Commerce Commission covering the services which it performs or offers, and has never filed any. Nor has it been requested to do so. Nor does it report, nor has it ever reported its employees to the Interstate Commerce Commission as carriers subject to Part I of the Interstate Commerce Act are required to do by the rules of the Commission governing the classification of railway employees and reports of their service and compensation. Nor does The Pennsylvania Railroad Company in reporting its employees to the Interstate Commerce Commission pursuant to such requirement include the employees of the Warehouse Company; nor has it ever done so. The Warehouse Company has never met any of the requirements of the Railway Labor Act, nor been subject to that Act, that Act being in effect since May 20, 1926—44 Stat. 577. Nor is the Warehouse Company subject to the Hours of Labor Act, September 3, 5, 1916—39 Stat. 721. Nor to the statutes relating to the Reports of Accidents, May 6, 1910—36 Stat. 350.

The Warehouse Company meets the requirements of the Fair Labor Standards Act, and the hours of labor of its employees are regulated accordingly. It is also subject to the Pennsylvania Workmen's Compensation Act, P.L. of 1915, 736, as amended, and pursuant to the terms of that Act provides the required insurance for the payment of compensation.

The control of the Warehouse Company exercised by the Railroad Company is that only in the voting of stock. The business of the Warehouse Company is conducted under the direction of a Superintendent who possesses and exercises full authority as to its management and policies. The business is conducted altogether separate from that of The Pennsylvania Railroad Company or of any other railroad company; and whether the property handled at the

warehouse comes in by rail or moves out that way, is not essential to the operation of the Warehouse Company.

The facilities of the Warehouse Company at Erie, Pa., were in use only during the period August 1937 to 15 May 1938. That use was caused by an emergency with respect to price conditions on newsprint paper owned by the Pittsburgh Press, and during the above period commercially stored with the Warehouse Company at Erie, Pa. As 169 of May 1, 1941, the lease of those facilities was given up; and the Warehouse Company now performs no service whatever at Erie, Pa., and is not in a position to do so. In fact, it has performed no service there since 15 May 1938.

The warehouse services performed at Erie, Pa., were with respect to carlot shipments, and as to those services the precise situation prevailed as has always prevailed and prevails now with respect to carlot shipments, both inbound and outbound, at the warehouses of the Warehouse Company at East Liberty in Pittsburgh and at Pittsburgh proper. That situation was and is an accepted arrangement between the Warehouse Company and the Railroad Company that on inbound shipments when the cars are placed on the private siding of the Warehouse Company the railroad transportation is entirely ended, and delivery has been fully made by the Railroad Company to the Warehouse Company. Thereafter the unloading of the cars and any further handling of the property is entirely that of the Warehouse Company in commercial storage. As to such outbound shipments, the loading was and is performed by the Warehouse Company for and on account of the owner of the property, and delivery to the railroad is accomplished only when the loading has been completed and the bill of lading showing receipt of the property has been issued by the Railroad Company. It is only then that railroad transportation begins. The Warehouse Company at its warehouse at Erie, Pa., in 1937-38 had such a private siding; and has had during the period of its operations, and now has such private sidings at its warehouse at East Liberty in Pittsburgh and in Pittsburgh proper, both in Pennsylvania.

The Warehouse Company was a subscriber to the Warehouse Code approved by the President on 27 January 1934, effective 10 February 1934, and adopted pursuant to the

provisions of the National Industrial Recovery Act, 48 Stat. 195; and operated under that code during the balance of the life of the National Industrial Recovery Act. A copy of such Warehouse Code is here attached and marked Exhibit A; a copy of the subscribers to that code as of 31 January 1935 is hereto attached and marked Exhibit B, on page 4 of which under Pennsylvania appears the name of the Duquesne Warehouse Company.

Attached hereto and marked Exhibit C, is a copy of the agreement between the Warehouse Company and The Pennsylvania Railroad Company for the handling by the warehouse of such refused and unclaimed freight as may be delivered by the Railroad Company to the Warehouse Company.

170 For the year 1940 the gross revenues of the Warehouse Company with respect to property entitled to transit privilege, if and when shipped out, were $14,068.; from other general commercial storage $65,484.; from sale of salvage freight $11,877., and sub-leasing of space to tenants $27,172.

The approximate number of employees engaged in the storage work with respect to freight entitled to the transit privilege, if and when shipped out, was 10; with respect to other commercial storage 38; with respect to sale of salvage freight 3, and with respect to sub-leasing of space 4.

Of the space in the two plants at East Liberty and Pittsburgh proper, approximately 10% was devoted to operations with respect to freight entitled to the transit privilege if and when shipped out.

The transit privilege which is available to those goods which are handled and stored in the warehouses of the Warehouse Company at Pittsburgh and East Liberty is available to like goods handled and stored in any other warehouse at Pittsburgh and East Liberty. It is not limited to Duquesne.

171 THE PENNSYLVANIA RAILROAD COMPANY

Legal Department

Philadelphia, March 12, 1942

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General Solicitor

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Adelbert S. Schroeder,
Theodore K. Warner, Jr.
Assistant General Solicitors

Re: Duquesne Warehouse Company
Jurisdictional Docket No. 18

Mr. Murray W. Latimer, Chairman
Railroad Retirement Board
Washington, D. C.

Dear Sir:

In relation to this case there are here submitted two affidavits, one from H. B. Bietenduefel, Superintendent of the Warehouse Company, and verified 4 March 1942, and the other from Wilson V. Little, verified 2 March, 1942. Mr. Bietenduefel's affidavit covers three points. The first is with respect to change of agreement with The Pennsylvania Railroad Company, effective 2 January 1941, for the handling and disposition of over and refused and unclaimed damaged freight. This agreement supersedes the agree-

ment of 1 February 1922 between the same parties and covering the same matter and now in the record in this case. The second is a statement of the fact that the lease of the Warehouse Company covering warehouse facilities at Erie, Pennsylvania, was terminated as of 1 May 1941, and that the Warehouse Company has done no business there since that time and intends to do none in the future. The third is information as to another warehouse company at Pittsburgh handling sugar in practically the same way as Duquesne Warehouse handles sugar for another refiner.

The agreement as to salvaged freight was changed to express the actual practice of the parties, and the change was subsequent to my submission of a statement of facts on 14 February 1940. The termination of the lease at Erie was also subsequent to that submission. Reference to the other warehouse at Pittsburgh is prompted because of the General Counsel's opinion in the Northwestern Warehouse Company case dated 3 July 1941, L-41-315.

172 The affidavit of Mr. Little is with relation to the question of industry, and shows that for the warehouse industry a Code of Fair Competition was established under the National Industrial Relations Act for the Merchandise Warehousing Trade, and that Duquesne Warehouse Company was a subscriber to that Code. N.R.A. went out of existence as a result of the decision of the Supreme Court in the *Schechter* case in 1935. It had been assumed that the documents in connection with this matter were located at Washington, D. C. Our search, however, finally located them at Chicago, Illinois, and it has only been recently that we have been able to secure the information necessary to have it embodied in this affidavit.

These affidavits contain facts which have developed since our submission to the Board on 14 February 1940, and could not have been developed before. They are necessary to a complete statement of facts in the case. It is, therefore, requested that they be made a part of the statement of facts and of the record in the case. When that is done, I am satisfied to rest the case on the facts heretofore submitted to the Board, together with these two affidavits, and to have the proceeding decided accordingly.

Very truly yours,

GEORGE R. ALLEN

George R. Allen

Assistant General Counsel

gra-h
enc.

173 RAILROAD RETIREMENT BOARD

In the Matter of Duquesne Warehouse Company } Jurisdictional Docket No. 18

Commonwealth of Pennsylvania } ss.
County of Allegheny }

H. A. Bietenduefel being duly sworn deposes and says as follows:

That he is Superintendent of Duquesne Warehouse Company, the respondent in this proceeding, and is duly authorized to make this affidavit. Deponent further states that he is familiar with the nature of this proceeding.

Annexed hereto and made a part hereof is photostat copy of agreement between the Warehouse Company and The Pennsylvania Railroad Company, dated 2 January 1941, and covering the handling and disposition of over and refused and unclaimed damaged freight delivered to the Warehouse Company by the Railroad Company. This agreement cancelled the agreement between the same parties covering similar subject and dated 1 February 1922, a copy of which has heretofore been furnished the Retirement Board. Neither under the previous agreement nor the present agreement, nor otherwise, has the Warehouse Company ever made delivery of freight included in either or both of these agreements, or any other freight to the consignee or owner for or on behalf of The Pennsylvania Railroad Company or any other railroad company. Nor has the Warehouse Company ever disposed of, under any direction of the Railroad Company, any freight under either agreement which has become so worthless as to be unsalable.

As of 1 May 1941, the lease of the warehouse facilities of the Warehouse Company at Erie, Pennsylvania, was terminated, and the Warehouse Company has performed no warehouse services whatever there since the termination of the lease and is not in a position to do so.

Similar sugar arrangement which the Warehouse Company has with a sugar refining company has long been
174 availed of at Pittsburgh by another large sugar refining company located on the eastern seaboard. It makes carlot shipments of sugar to Pittsburgh, consigning the same to another warehouse company, neither owned nor

controlled by any carrier subject to Part I of the Interstate Commerce Act. That company has a warehouse located on the line of The Pennsylvania Railroad Company at Pittsburgh, and connected with which is a private siding. The sugar of that refinery is shipped from the eastern seaboard to the warehouse company over the line of The Pennsylvania Railroad Company, delivered by the Railroad Company to the warehouse company on its private siding, handled by the warehouse company while in its possession, and later distributed by the warehouse for the owner at Pittsburgh and throughout surrounding territory. Previous to 1942 much of this sugar was received by that warehouse company from The Pennsylvania Railroad Company, handled by the warehouse company, and then shipped out by the warehouse company over the line of The Pennsylvania Railroad Company under the transit provision in precisely the same way as the sugar of that other refinery is handled by Duquesne Warehouse Company at its East Liberty warehouse. This arrangement as to the sugar handled under the transit provision terminated with the year 1941 because of contractual arrangements between that warehouse company and that refining company.

H. A. BIETENDEUFEL

Sworn to before me this Fourth
day of March, 1942.
J. B. A. TRACEY
(Seal) Notary Public
My Commission expires April 1, 1943

175 SALVAGE FREIGHT AGREEMENT

This Agreement made this Second day of January, 1941, by and between The Pennsylvania Railroad Company, a corporation of the Commonwealth of Pennsylvania, hereinafter called the "Railroad", party of the first part, and Duquesne Warehouse Company, a corporation of the Commonwealth of Pennsylvania, hereinafter called the "Warehouse", party of the second part.

Witnesseth:

Whereas, the Railroad has from time to time in its possession over freight and also refused damaged and unclaimed damaged freight at its various stations along its

line of railroad, and desires to arrange with the Warehouse, but altogether on an independent contractor basis, for the receipt, handling and disposition of such over and damaged freight, and the Warehouse is willing to receive, handle and dispose of the same upon the terms and conditions hereinafter set forth;

Now, Therefore, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereto covenant and agree as follows:

1. Any such over and damaged freight, except live stock, bulk freight or perishable freight, as the Railroad may desire to have handled and disposed of by the Warehouse in pursuance of this agreement, shall be transported by the Railroad to the City of Pittsburgh, Pa., and there delivered to the Warehouse as follows:

Immediately upon the arrival of any lot or lots of any such freight at Pittsburgh, the appropriate agent of the Railroad shall immediately notify the Warehouse of such arrival and of the place in Pittsburgh where the Warehouse may receive the freight, and the Warehouse shall thereupon promptly call for such lot or lots of such freight and remove the same to its Warehouse in Pittsburgh, first paying to the Railroad all lawful freight and other charges due upon the property at the time of such delivery.

Whenever any lot or lots of such freight may be delivered to the Warehouse as aforesaid, the Warehouse shall concurrently give to the agent of the Railroad from whom received a receipt in duplicate for each lot of such freight, and shall place on such freight receipt, both original and duplicate and also on the freight bill covering such freight, a lot number which shall be placed also with paint, crayon or other suitable means for marking on each lot or piece of freight covered by the said receipt and freight bill.

2. The Warehouse shall keep a detailed and accurate record of all sales made by it, together with a description of each piece, parcel or lot of freight sold, the amount of money received therefor, and all expenses in connection with each with said sale; and if requested by the Railroad, shall transmit to the Railroad, in duplicate, a complete and accurate copy of any such record; and the Railroad shall be entitled during working hours of any business day, to inspect the books, records, and papers of the Warehouse with respect to the matters here covered, and the Warehouse

shall give to any agent or representative of the Railroad appointed for that purpose, ready, convenient, and complete access to such books, papers, and records.

176 3. From the gross proceeds realized by the Warehouse at each such sale, the Warehouse shall receive a commission of ten per cent. (10%) upon the amount thereof, and shall also be entitled to deduct from such proceeds the amount of money, if any, actually paid by the Warehouse for reconditioning any piece, parcel or lot of such freight; drayage charges, if any, actually paid by the Warehouse for transporting such freight from the railroad station to the premises of the Warehouse; as well as all freight money and other charges paid by the Warehouse to the Railroad; and the balance of the gross proceeds shall be paid by the Warehouse to the Railroad not later than ten days after the date of such sale.

4. In the event that prior to any such sale, and in time to prevent the sale thereof, the true owner of any such over freight shall be ascertained, or the owner of any such damaged freight shall request delivery thereof, the Warehouse shall upon request of the Railroad return such freight to the Railroad upon payment to the Warehouse of all charges thereon which the Warehouse shall have paid to the Railroad as hereinbefore provided.

5. In the event that the total gross proceeds realized at any such sale do not equal the amount of the freight and other charges paid by the Warehouse to the Railroad, together with ten per cent. (10%) upon the amount of such gross proceeds which the Warehouse Company is entitled to receive, together with the amount, if any, actually paid by the Warehouse for reconditioning such freight; together with drayage charges, if any, actually paid by the Warehouse as aforesaid; then the Warehouse shall receive credit for the difference in the accounting hereunder between it and the Railroad.

Should any part of such freight handled by the Warehouse under this agreement be or become worthless so as to be unsalable, then the Warehouse shall dispose of such freight as in its judgment it may determine.

Should, at the request of the Railroad, any of such freight be returned by the Warehouse to the Railroad, then the Warehouse shall receive from the Railroad the amount of freight and other charges paid by the Warehouse to the

Railroad, and any drayage actually paid by the Warehouse, and any other expenditures actually made by the Warehouse in reconditioning the property, together with reasonable or lawful storage charges of the Warehouse.

6. The Warehouse shall at its own cost and expense keep the said freight delivered to it pursuant to this agreement insured against loss or damage or both by fire so as to afford protection hereunder fully adequate as to issuing company or companies, amount or amounts of coverage, and terms and conditions of policy or policies.

7. The Warehouse shall give to the Railroad a bond in the sum of Five Thousand Dollars ($5,000.00) with adequate corporate surety, conditioned upon the payment as herein provided by the Warehouse to the Railroad of all monies that may become due to the Railroad under this agreement, as well as the full performance by it, the Warehouse, of all other terms, conditions and covenants herein contained and to be kept and performed by the Warehouse.

177 8. It is mutually understood and agreed that the Warehouse shall be and remain an original and independent party hereunder, and shall employ, pay from its own funds and discharge all persons engaged in the performance of the work to be done by the Warehouse hereunder, and all such persons shall be and remain the sole employees of the Warehouse and subject to its exclusive direction and control.

The Warehouse admits and accepts exclusive responsibility on its part for any and all taxes, contributions or any payment whatever for old age or other pensions, unemployment compensation, or insurance, annuities or any benefits whatever of a social security nature imposed now or hereafter by any State or Federal statute or authority or arising thereunder with respect to its employees or their wages, salaries or other remuneration or compensation.

9. The Warehouse shall and it hereby expressly agrees to fully protect, indemnify and save harmless the Railroad from and against any and all claims, demands, actions, judgments, awards of any kind, damages, losses, costs, expense and liability of every kind and nature, including reasonable expenses which may arise or result directly or indirectly therefrom or on account of the negligence of the Warehouse, its agents, servants, representatives, in or

about the handling or disposition by the Warehouse of any of the freight delivered to it under this agreement.

The Warehouse shall also, and it hereby expressly agrees to be entirely and solely responsible for any and all liability, because of death or personal injury or other damage, to the employees or agents of the Railroad, employees or agents of the Warehouse, or any other person or persons whomsoever, arising from the acts or defaults of the Warehouse, its employees or agents, in connection with or resulting from any or all of the responsibilities or duties specifically mentioned or reasonably to be implied under this agreement, as well as in connection with the operation of the Warehouse in performance of this agreement.

10. This agreement cancels any agreement heretofore made by the parties hereto relative to the subject matter of this agreement. And this agreement inures to the benefit of the successors and assigns of the parties hereto, but neither party shall assign or otherwise transfer any of its rights or obligations hereunder without the written consent of the other. It shall become and be effective as of the date hereof, and shall continue in force to and including the thirty-first day of December, 1941, and thereafter from year to year unless sooner terminated in writing by either party to the other upon notice of one hundred and eighty (180) days, except as next provided. In the event of voluntary or involuntary general or other assignment by the Warehouse or any assignee consented to hereunder, for the benefit of creditors, or upon the taking or happening of any legal proceeding against the Warehouse, or any assignee assented to hereunder, in bankruptcy or reorganization or receivership proceedings or otherwise, this agreement may at its option be forthwith terminated by the Railroad upon service upon the Warehouse or such assignee of notice to that effect. And any such termination shall be without liability to the Railroad because of any damage whatsoever to the Warehouse or assignee, including any damages which may incidentally arise out of such termination because of expectable or anticipated profits.

178 Any such notice of termination as provided in this paragraph to the Railroad shall be served upon its Freight Claim Agent, at Philadelphia, Pennsylvania, and to the Warehouse upon its Superintendent at Pittsburgh,

Pennsylvania, and to any assignee consented to as provided herein upon such assignee, or in the absence of any such party, upon the person in charge of his office.

No breach of any of the terms or conditions of this agreement or failure to enforce the same shall be deemed or construed to be a waiver of any such terms or conditions.

In Witness Whereof, The parties hereto have caused this agreement to be executed in duplicate by their respective officers thereunto lawfully authorized this Second day of January, 1941.

THE PENNSYLVANIA RAILROAD COMPANY
By (Signed) J. C. White
General Manager

Witness:
(Signed) R. M. Harshman

DUQUESNE WAREHOUSE COMPANY
(Signed) E. W. Smith
President

Attest:
(Signed) J. G. Watson
Asst. Secretary

179. RAILROAD RETIREMENT BOARD

In the Matter of Duquesne Warehouse Company } Jurisdictional Docket No. 18

State of Illinois }
County of Cook } ss.

Wilson V. Little being duly sworn deposes and says, that he is Executive Secretary of the American Warehousemen's Association, Merchandise Division, with offices at 222 West Adams Street, Chicago, Illinois, and has continuously been such Secretary since 1 January 1926. There are two divisions of the Association, viz,, the Merchandise Division and the Cold Storage Division. The Asosciation is an organization whose membership is engaged in the merchandise and cold storage warehouse business.

Pursuant to Title I of the National Industrial Recovery Act, 48 Stat. 195, a Code of Fair Competition for the Merchandise Warehousing Trade was approved on behalf of the President of the United States on January 27, 1934,

by its terms became effective on February 10, 1934, and continued in effect until May 27, 1935, when it was terminated as a result of the case of *A. L. A. Schechter Poultry Corporation* v. *United States*, 295 U. S. 495. Attached hereto and made a part hereof and marked Exhibit A, is a true and correct copy of that Code printed by the United States Government Printing Office at Washington, D. C. Pursuant to the terms of the approval of the Code by the Administrator for Industrial Recovery the constitution and by-laws of the American Warehousemen's Association, Merchandise Division, were amended to the satisfaction of the Administrator. The number of the Code was 232 as shown on the title page.

180 Pursuant to Article VI of the Code, a Merchandise Warehousing Trade Code Authority was constituted to co-operate with the Administrator in the administration of the Code. Under authority of the same article, Section 2 (h), deponent became Secretary of the Code Authority and continued as such throughout the life of the Code. Among deponent's duties as such Secretary was that of the issuing of Certificates of Participation pursuant to Article VII of the Code, which certificates were in the form of display cards featuring the NRA Code "Blue Eagle" and having on each the serial number assigned to the member of the Trade to which it was issued.

Duquesne Warehouse Company was a member of the Merchandise Warehousing Trade, and as such had long been a member of our Asosciation. On January 31, 1934, it applied for a Certificate of Participation under the Code. On February 13, 1934, it was assigned Certificate No. 34-135, and was supplied with a rubber stamp for use in publicizing its participation in the Code, which stamp read "Subscriber to Merchandise Warehousing Trade Code. Certificate No. 34-135." The participation of Duquesne Warehouse Company in the Code of Fair Competition for the Merchandise Warehousing Trade continued throughout the duration of the Code. Annexed hereto and made a part hereof and marked Exhibit B, is a list of subscribers to the Merchandise Warehouse Code, dated May 2, 1934, which shows on page 3 under Pennsylvania, at Pittsburgh, Duquesne Warehouse Company. Likewise annexed hereto and made a part hereof and marked Exhibit C, is a similar list of subscribers to the Code, dated January 31, 1935, which

shows on page 4 under Pennsylvania, at Pittsburgh, Duquesne Warehouse Company.

WILSON V. LITTLE

Sworn to before me this
Second day of March, 1942.
JENNIE PINES.
(Seal) Notary Public

181 EXHIBIT A

Approved Code No. 232 Registry No. 1715—01

NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

FOR THE

MERCHANDISE WAREHOUSING TRADE

As Approved on January 27, 1934

United States
Government Printing Office
Washington, 1934

For sale by the Superintendent of Documents,
Washington, D. C.—Price 5 cents

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183 Approved Code No. 232

CODE OF FAIR COMPETITION
FOR THE
MERCHANDISE WAREHOUSING TRADE
As Approved on January 27, 1934

ORDER

APPROVING CODE OF FAIR COMPETITION
FOR THE
MERCHANDISE WAREHOUSING TRADE

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of a Code of Fair Competition for the Merchandise Warehousing Trade, and hearings having been duly held thereon and the annexed report on said Code, containing findings with respect thereto, having been made and directed to the President:

Now, Therefore, on behalf of the President of the United Sates, I, Hugh S. Johnson, Administrator for Industrial Recovery, pursuant to authority vested in me by Executive Orders of the President, including Executive Order No. 6543-A, dated December 30, 1933, and otherwise; do hereby incorporate by reference said annexed report and do find that said Code complies in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act; and do hereby order that said Code of Fair Competition be and it is hereby approved; provided, however, that the continued participation of the Merchandise Division of the American Warehousemen's Association shall be contingent upon the amendment of the constitution and bylaws of such association to the satisfaction of the Administrator on or before February 15, 1934.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

Approval recommended:
A. D. WHITESIDE,
Division Administrator.
Washington, D.C.,
January 27, 1934.

184 The President,

The White House.

Sir: This is a report of the Hearing on the Code of Fair Competition for the Merchandising Warehousing Industry, conducted in the Willard Hotel, on October 27th, 1933. The Code which is attached was presented by duly qualified and authorized representatives of the Industry, complying with the statutory requirements, said to represent 80 percent of the space available for merchandise warehousing purposes.

THE INDUSTRY

The number of firms in this business aggregate 1,420. These firms utilize approximately 45,000,000 square feet out of a capacity of 75,000,000 square feet. Approximately 30,000 employees are affected by this Code.

It is estimated that employment of warehouse labor will be increased 14 percent by the establishment of the uniform 45 maximum hour week proposed by the Code. It is stated that the increase in weekly pay rolls under the proposed minimum wage will be 7 percent.

PROVISIONS OF THE CODE

The Code provides for a basic work week of 45 hours. The Code proposes wage rates with differentials established on the basis of size of city and region. The proposed minimum hourly wage rates vary from 27.5 to 40 cents. The minimum weekly wage rates proposed for clerical employees range from $13.00 to $15.00.

Under Article IV, Administration, the Code provides for a Code Authority of 12 members from the Trade and, at the discretion of the Administrator, three additional members from the government.

The Trade Practice Section of this Code is for the most part a codification of rules and regulations which have been well established by the association serving this Trade.

FINDINGS

The Deputy Administrator in his final report to me on said Code having found as herein set forth and on the basis of all the proceedings in this matter;

I find that:

(a) Said Code is well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among the trade groups, by inducing
and maintaining united action of labor and manage-
185 ment under adequate Governmental sanctions and
supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment by improving standards of labor, and by otherwise rehabilitating industry.

(b) Said Trade normally employs not more than 50,000 employees; and is not classified by me as a major Industry.

(c) The Code as approved complies in all respects with the pertinent provisions of said Title of said Act, including without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof; and that the applicant association is a trade association truly representative of the aforesaid Trade; and that said association imposes no inequitable restrictions on admission to membership therein.

(d) The Code is not designed to and will not permit monopolies or monopolistic practices.

(e) The Code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(f) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said Code.

For these reasons, the Code has been approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

January 27, 1934.

186 CODE OF FAIR COMPETITION

FOR THE

MERCHANDISE WAREHOUSING TRADE

Article I—Purposes

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are established as a Code of Fair Competition for the Merchandise Warehousing Trade, and shall be the standard of Fair Competition for such trade, and shall be binding upon every member thereof.

Article II

The term "Merchandise Warehousing Trade", or "Trade", as used herein, includes the furnishing, for a consideration, of warehousing services for goods, wares and/or merchandise, except:

(a) Grain in bulk (grain elevators).

(b) Used household goods and/or used personal effects (household goods warehouses, parcel rooms, and safe deposit vaults).

(c) Used vehicles (public garages).

(d) Such goods, wares, and/or merchandise as require for their preservation artificial refrigeration below 45 degrees Fahrenheit (cold-storage warehouse).

(e) Warehousing services performed by those who are engaged in warehousing only agricultural commodities that are grown in their immediate area.

(f) Such warehousing services as may be required by the Interstate Commerce Act to be furnished by common carriers.

The term "employee" as used herein includes anyone engaged in the Merchandise Warehousing Trade in any capacity receiving compensation for his services, irrespective of the nature or method of payment of such compensation.

The terms "employer", "warehouseman", or "merchandise warehouseman", as used herein include anyone by whom any such employee is compensated or employed.

The term "member of the Trade" includes anyone engaged in the Merchandise Warehousing Trade as above defined, either as an employer or on his own behalf.

The term "Code Authority" as used herein means the Merchandise Warehousing Trade Code Authority, as provided for in Article VI of this Code.

187 The terms "President", "Act", and "Administrator" as used herein shall mean respectively the President of the United States, the National Industrial Recovery Act, and the Administrator of said Act.

Population for the purposes of this Code shall be determined by reference to the 1930 Federal Census.

Article III—Hours

Section 1. No employee shall be permitted to work in excess of forty-five (45) hours in any one week or eight (8) hours in any twenty-four (24) hour period, except as otherwise provided in this Article.

Sec. 2. The maximum hours fixed in the foregoing section shall not apply to: (a) Any employee in a managerial or executive capacity who receives more than thirty-five ($35.00) per week; (b) any employee on emergency work, but in any such special case one and one half (1½) times his hourly rate shall be paid for each hour worked in excess of eight (8) hours per day or forty-five (45) hours per week; (c) watchmen, who shall not be permitted to work in excess of fifty-four (54) hours in any one week or more than six (6) days in any consecutive seven (7) days.

Article IV—Wages

Section 1. (a) No warehouse labor shall be paid at less than the following hourly rates, regardless of whether an employee is compensated on a time rate, piecework or other basis:

Regions (as established in Article VI)

	In regions 3 and 7	In all other regions
In cities of more than 500,000 population	$0.325	$0.40
In cities of 50,000 to 500,000 population	.30	.375
In cities of less than 50,000 population	.275	.35

(b) No office or clerical employee shall be paid at less than the following weekly rates except office boys (16 to 18 years of age) who may be compensated at not less than 80%

of that amount, provided that the total number of those so compensated shall not exceed 10% of the total number of office employees, with a minimum of one:

In cities of more than 500,000 population	$15.00
In cites from 50,000 to 500,000 population	14.50
In cities of less than 50,000 population	13.50

(c) No office of clerical employee engaged on other than a weekly or longer employment basis shall be paid at less than forty (40) cents per hour in any of the Regions established in Article VI.

(d) No employee whose full-time weekly hours, as of July 1, 1933, are reduced, by reason of the provisions of Article III of this Code, by less than twenty percent (20%) shall have his full-time weekly earnings, as of July 1, 1933, reduced. No employee whose full-time weekly hours, as of July 1, 1933, are reduced, by reason of the provisions of Article III of this Code, in excess of twenty percent (20%) shall have his said earnings as of July 1, 1933, reduced by more than fifty percent (50%) of the amount calculated by multiplying the reduction in hours by the Code hourly rate.

Sec. 2. Each member of the Trade shall, within thirty (30) days after the effective date of this Code, effect an equitable adjustment of all wages above the minimum herein prescribed.

Article V—General Labor Provisions

Section 1. Each member of the Trade shall comply with the following requirements of the National Industrial Recovery Act:

(a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

(c) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

Sec. 2. No employer shall employ any person under sixteen (16) years of age.

Sec. 3. Within each State this Code shall not supersede any laws of such State imposing more stringent requirements on employers regulating the age of employees, wages, hours of work, or health, fire, or general working conditions than under this Code.

Sec. 4. Employers shall not reclassify employees or duties of occupations performed by employees so as to defeat the purposes of the Act.

Sec. 5. Each employer shall post in conspicuous places full copies of this Code.

Article VI—Administration

To further effectuate the policies of the Act, a Merchandise Warehousing Trade Code Authority is hereby constituted to cooperate with the Administrator in the administration of this Code.

Section 1. Organization and Constitution of Code Authority.

(a) The Code Authority shall consist of twelve (12) individuals from the Trade, ten (10) of whom shall be elected by members of the Trade and two of whom shall be the President and Vice President of the American Warehouseman's Association, Merchandise Division, or such other number as may be approved from time to time by the Administrator, to be elected as hereinafter provided, and of such additional members without vote, not to exceed three (3), as the Administrator, in his discretion, may appoint to represent such groups or governmental agencies as he may designate.

189 The Executive Committee of the American Warehousemans Association, Merchandise Division, shall arrange for the nomination and election of the Trade members of the Code Authority to be completed not later than sixty (60) days after the effective date of this code. Due and timely notice of such election shall be given to all members of the Trade who have complied with the terms of Section 3 of this Article. Each such member of the Trade shall be entitled to one vote in person or by proxy in the

nomination and election of the member of the Code Authority for his region. Nominations and election for each region shall be made in open meeting by plurality vote of the members of the Trade from the region.[1]

(b) The regions from which the ten (10) members of the Trade shall be elected are hereby established as follows:

Region No. 1.—Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island.

Region No. 2.—New York, Pensylvania, New Jersey, Delaware, Maryland, and District of Columbia.

Region No. 3.—Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, and West Virginia.

Region No. 4.—Ohio, Indiana, Illinois, Wisconsin (excluding Superior), and Michigan.

Region No. 5.—Minnesota; Superior, Wisconsin; North Dakota; South Dakota; and Montana.

Region No. 6.—Missouri, Iowa, Nebraska, and Kansas.

Region No. 7.—Texas, Louisiana, Arkansas, Oklahoma, and New Mexico.

Region No. 8.—Colorado, Utah, and Wyoming.

Region No. 9.—Washington, Oregon and Idaho.

Region No. 10.—California, Nevada, and Arizona.

The Chairman shall represent the territorial possessions of the United States.

(c) The President and Vice-President of the American Warehousemen's Association, Merchandise Division, shall be Chairman and Vice-Chairman respectively of the Code Authority. Pending election of the other members of the Code Authority as provided for in (a) of this Section, the President of the American Warehousemen's Association, Merchandise Division, shall appoint the other ten members of the Authority, with the approval of the majority of the members of the Executive Committee of the American Warehousemen's Asosciation, Merchandise Division, and with due regard for representation of Warehousemen's Associations in each respective region.

The ten (10) members appointed from the Trade shall serve for not more than sixty (60) days from the effective date of this Code. The elected members shall serve for a

[1] See paragraph 2 of order approving this Code.

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period of one year. Election of such members shall be held annually.

(d) Each Trade association directly or indirectly participating in the selection or activities of the Code Authority shall:

1. Impose no inequitable restrictions on membership, and

190 2. Submit to the Administrator true copies of its articles of association, bylaws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Administrator may deem necessary to effectuate the purposes of the Act.

(e) In order that the Code Authority shall at all times be truly representative of the Trade and in other respects comply with the provisions of the Act, the Administrator may provide such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, he may require an appropriate modification in the method of selection of the Code Authority.

(f) The Chairman, Vice Chairman, and Secretary of the Code Authority shall constitute the Administrative Committee, which shall exercise such authority and perform such duties as may be delegated to it by the Code Authority.

(g) The Treasurer of the American Warehousemen's Association, Merchandise Division, shall serve as the Treasurer of the Code Authority.

(h) The Executive Secretary of the American Warehousemen's Association, Merchandise Division, shall serve as the Secretary of the Code Authority.

Sec. 2 (a) The Code Authority shall have the following duties and powers to the extent permitted by the Act: to make such rules and regulations; procure such reports and other information; appoint such committees; and employ or designate such agents and delegate to them such duties and authority, as may be necessary.

(b) If the Administrator shall determine that any action of a code authority or any agency thereof is unfair or unjust or contrary to the public interest, the Administrator may require that such action be suspended for a

period of not to exceed thirty days to afford an opportunity for investigation of the merits of such action and further consideration by such code authority or agency pending final action, which shall be taken only upon approval by the Administrator.

(c) Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent, or employee of the Code Authority. Nor shall any member of the Code Authority, exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this Code, except for his own willful misfeasance or nonfeasance.

Sec. 3. Members of the Trade shall be entitled to participate in and share the benefits of the activities of the Code Authority and to participate in the selection of the members thereof by assenting to and complying with the requirements of this Code and sustaining their reasonable share of the expenses of its formulation and administration. The Code Authority shall establish, assess and collect from each subscriber to this Code an initial annual fee, which shall become applicable and due upon the effective date of this Code, as follows: $24.00, plus $12.00 for each 10,000 square feet or fraction thereof, devoted to the conduct of the merchandise warehousing business as de-
191 fined in Article II, subject to a maximum annual fee of $264.00 for any one merchandise warehouseman.

Due and timely notice shall be sent to every member of the Trade whose name can be ascertained after diligent search that the requirements of this section must be complied with before such member will be entitled to a vote in the nomination and election of his Trade member of the Code Authority.

Adjustments in the amount of fees may be made from time to time by the Code Authority, subject to review by the Administrator, on the basis of capacity, volume of business, and/or such other factors as may be equitable to be taken into consideration.

Article VII—Certificate of Participation

Section 1. Upon payment of the fee prescribed in Article VI, Section 3, each member of the Trade, shall receive from the Code Authority a Certificate of Participation, serially numbered, showing that he is a subscriber to this Code.

Sec. 2. Commencing thirty (30) days after the effective date of this Code, every warehouse receipt issued by each member of the Trade shall bear a notation showing his certificate number and reading: "Subscribed to Merchandise Warehousing Trade Code. Certificate No. —."

Sec. 3. To further the purposes of Title I of the Act, each member of the Trade may otherwise display similar evidence of his participation in this Code.

Article VIII—Standardization of Warehousing Trade Practices

Each member of the Trade shall post in a conspicuous place, accessible to view, the following section:

Section 1. The following, the Standard Contract Terms and conditions, are hereby made a part of this Code of Fair Competition:

"As adopted by unanimous vote by representatives of the shippers, bankers, railway men, and warehousemen at a general conference, April 30, 1926, at the Department of Commerce, Washington, D. C., and indorsed October 30, 1926, by the Department of Commerce.

Section 1. Tender for Storage.—(a) All goods for storage shall be delivered at the warehouse properly marked and packed for handling. The storer shall furnish, at or prior to such delivery, a manifest showing marks, brands, or sizes to be kept and accounted for separately, and the class of storage desired; otherwise the goods may be stored in bulk or assorted lots, in freezer, cooler, or general storage, at the discretion of the warehousemen, and will be charged for accordingly.

(b) The word "lot" as used herein means the unit or units of goods for which a separate account is to be kept by the warehouseman. Delivery of all or any units of a lot shall be made without subsequent sorting except by special arrangement and subject to a charge.

(c) The warehouseman undertakes to store and deliver

goods only in the packages in which they are originally received.

192 Sec. 2. Storage period.—(a) All goods are stored on a month-to-month basis, unless otherwise provided. A storage month shall extend from a date in one calendar month to, but not including, the same date of the next and all succeeding calendar months, but if there be no corresponding date in the next succeeding calendar month, it shall extend to and include the last day of that month. When the last day of a final storage month falls on Sunday or a legal holiday, the storage month shall be deemed to expire on the next succeeding business day.

(b) Except where other procedure is provided by the warehouse receipts act, the warehouseman may, upon written notice to the storer of record and to any other person known by the warehouseman to claim an interest in the goods, require the removal of any goods by the end of the next succeeding month. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified.

Sec. 3. Insurance, Storage Rates, Expiration, and Transfers.—(a) All charges for storage are on a month-to-month basis unless otherwise provided. Charges for any particular lot shall begin at the receipt of the first unit of that particular lot in store and shall continue and include the storage month during which the last unit of the particular lot is delivered. Charges shall be made on the basis of the maximum number of units in any particular lot in store during a storage month. All charges for storage are due on the first day of a storage month, and all other charges are due when incurred.

(b) Instructions to transfer goods on the books of the warehouseman are not effective until delivered to and accepted by him, and all charges up to the time transfer is made are chargeable to the storer of record. If a transfer involves rehandling the goods, it will be subject to a charge.

(c) The warehouseman reserves the right to move, at his own expense of transfer, and upon notice sent by registered mail to the storer of record and to the last known holder of the negotiable warehouse receipt, any goods in storage from any room of the warehouse in which they may be stored to any other of his rooms or warehouses, but

if such storer or holder takes delivery of his goods in lieu of transfer, no storage charges shall be made for the current storage month.

(d) When rates are quoted by weight, they will, unless otherwise specified, be computed on gross weight, and 2,000 pounds shall constitute a ton.

(e) Goods are not insured nor do storage rates include insurance unless so specified in writing. (Adopted with the understanding that in any State requiring insurance by statute the words "or required by statute" would be considered a part of the standard terms and conditions.)

Sec. 4. Handing.—(a) Handling charges cover the ordinary labor and duties incidental to receiving goods at warehouse door, storing and delivering to warehouse door, but do not include unloading or loading of cars, vehicles, or vessels, unless so specified. Handling charges will be billed with the storage for the first month.

193 (b) Goods, at the request of a storer, received or delivered during other than usual business hours will be subject to an additional charge.

Sec. 5. Car Loading and Unloading.—(a) Charges for unloading or loading of cars include use of switch track, labor required to or from warehouse door, and billing of car.

(b) Dunnage and fastenings supplied by the warehouseman and used in loading out cars are chargeable to the storer.

(c) Any additional costs incurred by the warehouseman in unloading cars containing damaged goods are chargeable to the storer.

(d) The warehouseman, unless he has failed to exercise due care and diligence, shall not be responsible for demurrage, nor for delays in unloading inbound cars, nor for delays in obtaining cars for outbound shipments.

Sec. 6. Delivery Requirements.—(a) No goods shall be delivered or transferred except upon receipt by the warehouseman of complete instructions properly signed by the storer.

(b) When a negotiable receipt has been issued, no goods covered by that receipt shall be delivered or transferred on the books of the warehouseman unless the receipt, properly indorsed, is surrendered for cancellation or for indorsement of partial delivery thereon.

(c) When goods are ordered out, a reasonable time shall be given the warehouseman to carry out instructions; and if he is unable, due to causes beyond his control, to effect delivery before expiring storage dates, the goods will be subject to charges for another storage month; except when the warehouseman has given notice in accordance with the provisions of section 2 (b), or because of fire, acts of God, war, public enemies, seizure under legal process, strikes or lockouts, riots and civil commotions, if he is unable, due to causes beyond his control, to effect delivery before the expiring storage date, the goods shall be subject to storage charges only for that part of the month during which the goods remain in store.

Sec. 7. Bonded Stores.—A charge in addition to regular rates will be made for merchandise in bond.

Sec. 8. Minimum Charges.—A minimum charge will be assessed for storage, handling, and other services.

Sec. 9. Extra Service (a) Extra services in the interest of the storer, such as special warehouse space, material, drayage, repairing, coopering, sampling, weighing, repiling, inspection, physical warehouse checking, compiling stock statements, collections, revenue stamps, reporting marked weights or numbers, handling railroad expense bills, etc., are chargeable to the storer.

(b) Stock statements submitted in duplicate by the storer will be checked with the books of the warehouseman without charge.

(c) Shipping includes marking, tagging, billing, procuring, and forwarding bills of lading, and is chargeable to the storer.

(d) Freight and other disbursements made on behalf of the storer are due and payable on demand and subject to interest from date billed by the warehouseman.

(e) Stores, including holders of negotiable receipts, may, subject to insurance regulations and reasonable limitations, have access to their goods in store when accompanied by a warehouse employee whose time is chargeable to the storer.

194 Sec. 10. Liability.—(a) The responsibility of a warehouseman, in the absence of written provisions, is the reasonable care and diligence required by law.

(b) Perishable goods, or goods which are susceptible to damage through temperature changes or other causes incident to general storage, are accepted in general storage

only at owner's risk for such damages as might result from general storage conditions.

Sec. 11. Schedule of Charges.—Whenever provision is made in these standard contract terms and conditions for a charge or charges by the warehouseman, such charge or charges will conform to the warehousemen's tariff in effect at the time the charge accrues or the service is performed, except that no increase in charges within the direct control of the warehouseman will be made on goods that are in storage without a 30-day notice mailed to the storer of record or the last-known holder of a negotiable warehouse receipt.

Sec. 12. (a) The Standard Contract Terms and Conditions designate each of the following as a separate and distinct warehousing service:

Handling
Storage
Providing special warehouse space
Supplying material
Repairing or coopering
Sampling
Weighing
Repiling
Inspection
Special physical warehouse checking
Compiling special stock statements
Making collections of money in behalf of customer
Furnishing revenue stamps
Reporting marked weights or numbers
Payment of freight charges in behalf of customer
Shipping

(b) Other separate and distinct warehousing services are:

Drayage
Distribution of "pool" cars
Providing office space
Providing office service; special telephone service, invoicing for customers, etc.
Providing extra labor.

(c) Not to name an adequate and separate rate or charge for each of the services listed in subsection (a) of this Section 12 when making quotations, or not assess an adequate rate or charge (whether or not there is an existing

rate or charge) for each of the services listed in subsections (a) and (b) of this Section 12 when performed, shall be deemed a violation of this Code.

Such adequate rate or charge shall not be less than the lowest reasonable cost of the most efficient and lowest cost operator in the locality for the type of service for which the rate or charge is operative. Such reasonable cost shall comprehend fair and reasonable rates of pay to labor and include all other items of expense and overhead as determined by cost-accounting methods recognized in the
195 Trade and approved by the Code Authority, subject to the approval of the Administrator. Such reasonable cost may be approved or modified in conformity with the meaning of this Section by the Code Authority after due notice to and hearing for the members of the Trade in the locality, subject to review and modification by the Administrator.

Article IX—Tariffs

Within thirty (30) days after the effective date of this Code, each member of the Trade shall publish, post in a conspicuous place open to public inspection, and file with the Code Authority a tariff containing all rates, charges, terms and conditions covering his warehousing families and services, which rates, charges, terms, or conditions shall not be changed except upon the publication, posting, and filing of a new or supplemental tariff, to become effective ten (10) days thereafter.

Article X—Information and Reports

Section 1. Each member of Trade shall keep his records and books of account in such form as to facilitate furnishing the information that the Code Authority may require, subject to the approval of the Administrator.

Sec. 2. In addition to the information required to be submitted to the Code Authority, there shall be furnished to government agencies such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act.

Sec. 3. Information determined by the Code Authority to be of a confidential nature shall be strictly treated as such by any member of the Code Authority to whose attention such information may come.

Article XI—Unfair Trade Practices

The following practices constitute unfair methods of competition for members of the Trade and are prohibited:

1. To describe the merchandise warehousing business, the method used, facilities furnished or services rendered, or to quote rates or charges, or to state terms or conditions, in a manner that is misrepresentative or that has a tendency or capacity to deceive customers or prospective customers as the true character thereof in any particular.

2. To offer or make confidential or secret rates, charges, terms, or conditions, or to offer or make in any manner or by any device whatever, more advantageous rates, charges, terms, or conditions, to certain favored customers or prospective customers than are offered or made to all customers or prospective customers.

3. To defame competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations or by the false disparagement of the grade or quality of their service.

4. To subsidize directly or indirectly, or offer to subsidize, customers, or prospective customers, or those
196 representing them, by contributions or subsidies of money, services, or other gratuities or things of value in the form of rebates, special concessions, payment of claims for loss or damage known to be fraudulent, or in any form, for the purpose or with the effect of inducing them to patronize or deal, or contract to patronize or deal, with the donor or of causing them to refrain from patronizing or dealing, or contracting to patronize or deal, with the donor's competitors.

5. To issue or aid in issuing a warehouse receipt when the products for which such receipt is issued have not been actually received by, or are not under the actual control of, the one issuing such receipt at the time of the issuance thereof.

6. To issue or aid in issuing a negotiable warehouse receipt for stored products of which the one issuing such receipt is owner, either solely or jointly or in common with others, without stating in said receipt the fact of such ownership.

7. To deliver part or all of any lot of stored products for which a negotiable warehouse receipt, the negotiation

of which would transfer the right to the possession of such products, has been issued and is outstanding and uncanceled, without obtaining the possession of such receipt, or taking up and canceling the same, or placing a statement plainly upon it of what products have been delivered, at or before the time of the delivery of such products, except where delivery thereof is made pursuant to an order of a court of competent jurisdiction or in compliance with a sale made to satisfy a lien thereon.

8. To issue fraudulently or aid in fraudulently issuing a warehouse receipt for stored products which contains any false statement.

9. To quote or charge a rate that is a departure from his tariff as provided in Article IX.

10. To use any subterfuge to evade any provisions of this Code, such as (but without limitation) renting or offering to rent warehouse space under such terms or conditions as would defeat the purposes of this Code.

Nothing in this Code shall limit the effect of any adjudication by the Courts or holding by the Federal Trade Commission on complaint, finding, and order, that any practice or method is unfair, providing that such adjudication or holding is not inconsistent with any provisions of the Act or of this Code.

Article XII—Modification of This Code

Section 1. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provision of Section 10 (b) of the National Industrial Recovery Act, from time to time to cancel or modify any order, approval, license, rule, or regulation issued under Title I of said Act, and specifically, but without limitation, to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

Sec. 2. It is contemplated that certain specialized branches of the Trade, by reason of their peculiar characteristics, may require separate subdivisions of this Code, or subsidiary codes, and that such subdivisions or subsidiary codes not inconsistent with the general provisions and intent of this Code may, with the approval of the Code Authority and of the Administrator, be made a part of this Code.

Sec. 3. This Code, except as to provisions required by the Act, may be modified on the basis of experience or changes in circumstances, such modification to be based upon application to the Administrator and such notice and hearing as he shall specify, and to become effective on approval of the Administrator.

Article XIII—Monopolies

No provision of this Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress or discriminate against small enterprises, or to permit or encourage unfair competition.

Article XIV—Effective Date

This Code shall become effective on the fourteenth day after its approval by the President.

Approved Code No. 232.
Registry No. 1715-01.

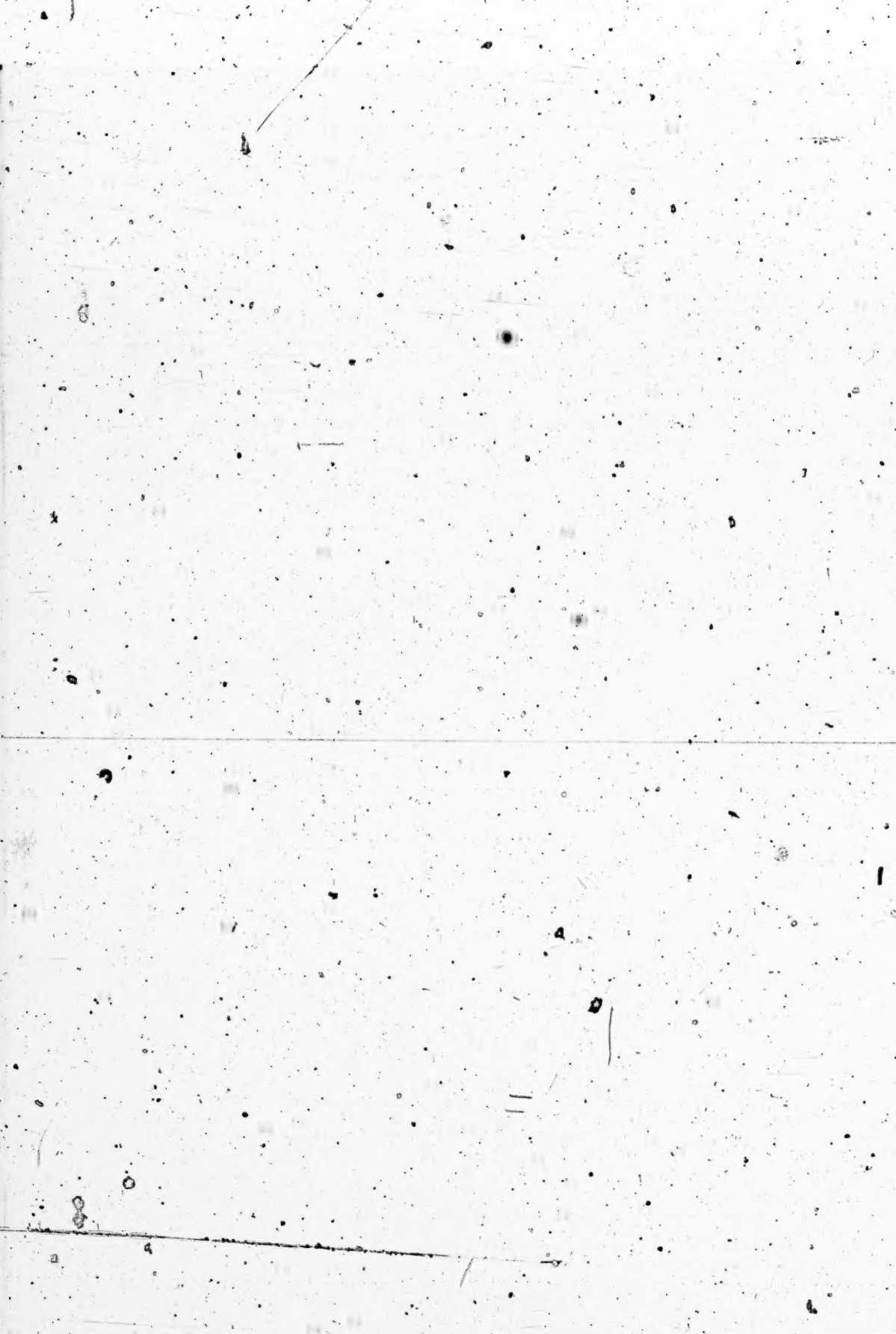

EXHIBIT B

5-5-34 | Memo. No. 2
Memo. No. 3-Sub. List
Bulletin No. 1
Bulletin No. 2

SUBSCRIBERS

To

MERCHANDISE WAREHOUSING TRADE CODE

May 2, 1934

669974 O - 35 (Face p. 206) No. 1

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REGION 1

CONNECTICUT

BRIDGEPORT
Bridgeport Storage Warehouse Co.
Hartford Despatch & Warehouse Co.
The W. M. Terry Co., Inc.

DANBURY
The Danbury Warehouse Co.

HARTFORD
Bill Brothers Co.
Boat Line Warehouse Co., Inc.
Hartford Despatch & Warehouse Co.
Whitaker & Bacon

MERIDEN
H. T. Smith Express Co.

NEW HAVEN
Davis Storage Co.
Durham Storage Co.
The Smedley Co.

NORWALK
L. J. Reynolds & Son

TORRINGTON
E. J. Kelley Co.

WATERBURY
The Blakeslee Co.

MAINE

BANGOR
McLaughlin Warehouse Co.

PORTLAND
Atlantic Storage & Warehouse, Inc.
Galt Block Warehouse Co.
New England Cold Storage Co., Inc.

MASSACHUSETTS

BOSTON
Atlas Terminal Stores, Inc.
Bankers Warehouse Co.
Big Three, Inc.
Boston Tidewater Terminal, Inc.
Central Warehouse Co.
Congress Stores, Inc.
Dexter Stores, Inc.
Eldridge Baker Co.
Fargo Stores, Inc.
Federal Warehouse, Inc.
Fitz Warehouse & Distributing Co.

MASSACHUSETTS (Continued)

CAMBRIDGE
Cambridge Terminal Warehouse Co.

EAST CAMBRIDGE, BOSTON
Hoosac Storage & Warehouse Co.

FALL RIVER
Fall River Warehouse Co.
Keogh Storage Co.
Mackenzie & Winslow, Inc.
Shellmound Warehouse Co.

HOLYOKE
Holyoke Storage Co.
Sheldon Transfer & Storage Co., Inc.

LOWELL
Atlantic States Whse. & Cold Stge. Co.
Lowell Public Warehouse Co., Inc.

LYNN
Lynn Storage Warehouse Co.

NEW BEDFORD
Belleville Warehouse Co.
Nauset Warehouse Co.
New Bedford Public Warehouse Co.
New Bedford Storage Whse. Co.
Prospect Warehouse Co.
Winslow-Mackenzie Co.

SOMERVILLE
The Vacuum Co.

SPRINGFIELD
Atlantic States Whse. & Cold Stge. Corp.
Connecticut Valley Storage Whse. Co.
Hartford Despatch & Warehouse Co.
A. J. Lane Co.
Litch Trucking Co.
Sturtevant-Calderwood Co.

WORCESTER
Colonial Warehouse & Distributing Co.

NEW HAMPSHIRE

LACONIA
F. S. Willey & Co., Inc.

MANCHESTER
McLane & Taylor

REGION 1

CONNECTICUT

BRIDGEPORT
- Bridgeport Storage Warehouse Co.
- Hartford Despatch & Warehouse Co.
- The W. M. Terry Co., Inc.

DANBURY
- The Danbury Warehouse Co.

HARTFORD
- Bill Brothers Co.
- Boat Line Warehouse Co., Inc.
- Hartford Despatch & Warehouse Co.
- Whitaker & Bacon

MERIDEN
- H. T. Smith Express Co.

NEW HAVEN
- Davis Storage Co.
- Durham Storage Co.
- The Smedley Co.

NORWALK
- L. J. Reynolds & Son

TORRINGTON
- E. J. Kelley Co.

WATERBURY
- The Blakeslee Co.

MAINE

BANGOR
- McLaughlin Warehouse Co.

PORTLAND
- Atlantic Storage & Warehouse, Inc.
- Galt Block Warehouse Co.
- New England Cold Storage Co., Inc.

MASSACHUSETTS

BOSTON
- Atlas Terminal Stores, Inc.
- Bankers Warehouse Co.
- Big Three, Inc.
- Boston Tidewater Terminal, Inc.
- Central Warehouse Co.
- Congress Stores, Inc.
- Dexter Stores, Inc.
- Eldridge Baker Co.
- Fargo Stores, Inc.
- Federal Warehouse, Inc.
- Fitz Warehouse & Distributing Co.
- J. L. Kelso Co.
- Manufacturers' Warehouse Co.
- Melchet Street Stores, Inc.
- Merchants Warehouse Co.
- North Station Industrial Bldg., Inc.
- Oelrichs & Co.
- Service Warehouse Co.
- Wiggin Terminals, Inc.
- D. S. Woodberry Co.

SOUTH BOSTON
- Andrew Square Warehouse
- Fort Point Warehouse

MASSACHUSETTS (Continued)

CAMBRIDGE
- Cambridge Terminal Warehouse Co.

EAST CAMBRIDGE, BOSTON
- Hoosac Storage & Warehouse Co.

FALL RIVER
- Fall River Warehouse Co.
- Keogh Storage Co.
- Mackenzie & Winslow, Inc.
- Shellmound Warehouse Co.

HOLYOKE
- Holyoke Storage Co.
- Sheldon Transfer & Storage Co., Inc.

LOWELL
- Atlantic States Whse. & Cold Stge. Co.
- Lowell Public Warehouse Co., Inc.

LYNN
- Lynn Storage Warehouse Co.

NEW BEDFORD
- Belleville Warehouse Co.
- Nauset Warehouse Co.
- New Bedford Public Warehouse Co.
- New Bedford Storage Whse. Co.
- Prospect Warehouse Co.
- Winslow-Mackenzie Co.

SOMERVILLE
- The Vacuum Co.

SPRINGFIELD
- Atlantic States Whse. & Cold Stge. Corp.
- Connecticut Valley Storage Whse. Co.
- Hartford Despatch & Warehouse Co.
- A. J. Lane Co.
- Litch Trucking Co.
- Sturtevant-Calderwood Co.

WORCESTER
- Colonial Warehouse & Distributing Co.

NEW HAMPSHIRE

LACONIA
- F. S. Willey & Co., Inc.

MANCHESTER
- McLane & Taylor

RHODE ISLAND

PAWTUCKET
- Darlington Warehouse Co.

PROVIDENCE
- The Cole Teaming Warehouse Co.
- Fox Point Warehouses, Inc.
- Merchants Cold Storage & Whse. Co.
- Terminal Warehouse Co. of R. I., Inc.

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REGION 2

DISTRICT OF COLUMBIA

WASHINGTON
- The Jacobs Transfer Co., Inc.
- The Terminal Storage Co. of Washington
- Terminal Refrigerating & Warehousing Corporation

MARYLAND

BALTIMORE
- Baltimore Fidelity Warehouse Co.
- Belt's Wharf Warehouses, Inc.
- Camden Warehouses
- Canton Co. of Baltimore
- Central Warehouse Co., Inc.
- McCormick Warehouse Co., Inc.
- Merchants Terminal Corp.
- Ruckert Terminal Corp.
- The Terminal Warehouse Co. of Baltimore City

CUMBERLAND
- Baltimore Fidelity Warehouse Co.

SALISBURY
- Dennis Storage & Moving Co.

NEW JERSEY

ATLANTIC CITY
- National Storage Warehouse Co.

CARLTON HILL
- Metropolitan Warehouse Co., Inc.

ELIZABETH
- Bayway Terminal
- Weimar Storage Co., Inc.

HOBOKEN
- Campbell Stores
- Hoboken Dock Co.
- United States Testing Co., Inc.

JERSEY CITY
- Harborside Warehouse Co.
- Jersey City Stores, Inc.
- Lackawanna Terminial Warehouses, Inc.
- Long Dock Co.

NEWARK
- Job. De Camp, Inc.
- Essex Warehouse Co.
- Lehigh Warehouse & Trans. Co.
- Mercur Corp.
- Newark Warehouse Co.
- Wayerly Stge. & Whse. Co., Inc.

PATERSON
- Paterson Storage Co.

NEW YORK

ALBANY
- Albany Term. & Sec. Warehouse Co., Inc.

NEW YORK (Continued)

- South Eleventh Street Whse. Corp.
- Tooker Storage & Forwarding Co.
- Wallabout Basin Storage & Term. Co., Inc.
- The S. M. Wheeler Warehouse Co.

BUFFALO
- Buffalo Freight Terminal Warehouse Co.
- Buffalo Storage & Carting Co.
- Keystone Warehouse Co.
- Knowlton Warehouse Co.
- Larkin Co., Inc.
- The Market Terminal Warehouse
- Monarch Storage & Whse. Co.
- M. Moran Transportation Lines, Inc
- Seneca Terminal & Storage Corp.
- Terminals & Transportation Corp. of Amer.

ELMIRA
- Joseph Bimberg Sons
- A. C. Rice Storage Corp.

FAIRPORT
- Fairport Storage & Ice Corp.

HILTON
- Hilton Milling & Warehouse Co., Inc.

ITHACA
- Dean of Ithaca, Inc.

JAMESTOWN
- Chautauqua Storage & Transfer Co.

NEW YORK
- Acker & Co., Inc.
- American Dock Co.
- Arbuckle Brothers
- Atlantic Tidewater Terminals
- Baker & Williams
- Baltimore & Ohio Stores, Inc.
- Beards' Erie Basin, Inc.
- Wm. R. Boyce & Son, Inc.
- Bronx Refrigerating Co.
- Brookhattan Terminal Warehouse Corp.
- Bush Terminal Co.
- Columbia Storage Warehouses
- Henry J. Comens, Inc.
- Commercial Stores, Inc.
- Continental Milling & Whse. Co., Inc.
- Theodore Crowell, Inc.
- Daniels & Kennedy, Inc.
- Fidelity Warehouse Co.
- W. S. Forbes & Company
- Gough & Semke, Inc.
- C. C. Hamilton & Co., Inc.
- Harris Warehouse, Inc.
- James J. Harrison
- Heermance Storage & Refrigerating Co.
- Independent Warehouses, Inc.
- Insular Terminal Corporation
- Jane Street Warehouse
- Kierstead Warehouse & Forwarding Co., Inc.
- Kingsbridge Auto Storage & Whse. Co., Inc.
- L. & F. Stores
- Lehigh Harlem River Terminal Whse., Inc.
- Liberty Storage & Warehouse Co.
- Lincoln-Tidewater Terminals, Inc.
- F. C. Linde Co.
- The Long Dock Co.
- The Manhattan Storage & Warehouse Co.
- T. I. McCormack Trucking Co., Inc.
- The Jay A. Mellish Warehouse, Inc.

Belt's Wharf Warehouses, Inc.
Camden Warehouses
Canton Co. of Baltimore
Central Warehouse Co., Inc.
McCormick Warehouse Co., Inc.
Merchants Terminal Corp.
Rocket Terminal Corp.
The Terminal Warehouse Co. of Baltimore City

CUMBERLAND
Baltimore Fidelity Warehouse Co.

SALISBURY
Dennis Storage & Moving Co.

NEW JERSEY

ATLANTIC CITY
National Storage Warehouse Co.

CARLTON HILL
Metropolitan Warehouse Co., Inc.

ELIZABETH
Bayway Terminal
Weimar Storage Co., Inc.

HOBOKEN
Campbell Stores
Hoboken Dock Co.
United States Testing Co., Inc.

JERSEY CITY
Harborside Warehouse Co.
Jersey City Stores, Inc.
Lackawanna Terminal Warehouses, Inc.
Long Dock Co.

NEWARK
Job De Camp, Inc.
Essex Warehouse Co.
Lehigh Warehouse & Trans. Co.
Mercur Corp.
Newark Warehouse Co.
Waverly Stge. & Whse. Co., Inc.

PATERSON
Paterson Storage Co.

NEW YORK

ALBANY
Albany Term. & Sec. Warehouse Co., Inc.
Central Railway Terminal & Cold Storage Co., Inc.
Roberts Terminal Warehouse Co.

BINGHAMTON
E. W. Conklin & Son
C. G. Yager & Co., Inc.

BROOKLYN
Bisco Warehouse Corp.
Bowne-Morton's Stores, Inc.
Brooklyn Terminal Stores, Inc.
Brooklyn Waterfront Terminal
Butlers Warehouses, Inc.
Greenpoint Terminal Corp.
Jay Street Terminal
Ed. J. Mooney
Monarch Storage & Whse. Co.
M. Moran Transportation Lines, Inc
Seneca Terminal & Storage Corp.
Terminals & Transportation Corp. of Amer.

ELMIRA
Joseph Bimberg Sons
A. C. Rice Storage Corp.

FAIRPORT
Fairport Storage & Ice Corp.

HILTON
Hilton Milling & Warehouse Co., Inc.

ITHACA
Dean of Ithaca, Inc.

JAMESTOWN
Chautauqua Storage & Transfer Co.

NEW YORK
Acker & Co., Inc.
American Dock Co.
Arbuckle Brothers
Atlantic Tidewater Terminals
Baker & Williams
Baltimore & Ohio Stores, Inc.
Beards' Erie Basin, Inc.
Wm. R. Boyce & Son, Inc.
Bronx Refrigerating Co.
Brookhattan Terminal Warehouse Corp.
Bush Terminal Co.
Columbia Storage Warehouses
Henry J. Comens, Inc.
Commercial Stores, Inc.
Continental Milling & Whse. Co., Inc.
Theodore Crowell, Inc.
Daniels & Kennedy, Inc.
Fidelity Warehouse Co.
W. S. Forbes & Company
Gough & Semke, Inc.
C. C. Hamilton & Co., Inc.
Harris Warehouse, Inc.
James J. Harrison
Heermance Storage & Refrigerating Co.
Independent Warehouses, Inc.
Insular Terminal Corporation
Jane Street Warehouse
Kierstead Warehouse & Forwarding Co., Inc.
Kingsbridge Auto Storage & Whse. Co., Inc.
L. & F. Stores
Lehigh Harlem River Terminal Whse., Inc.
Liberty Storage & Warehouse Co.
Lincoln-Tidewater Terminals, Inc.
F. C. Linde Co.
The Long Dock Co.
The Manhattan Storage & Warehouse Co.
T. I. McCormack Trucking Co., Inc.
The Jay A. Mellish Warehouses, Inc.
Merchants Refrigerating Co.
Midtown Warehouse, Inc.
The National Cold Storage Co., Inc.
National Storage Co.
New York Dock Co.
William H. Norman, Inc.
North River Stores, Inc.
Old Slip Warehouse, Inc.
Pennsylvania Storage Warehouse, Inc.
Piers, Inc.
Port Warehouses, Inc.
Pouch Terminal, Inc.
Railroad Stores, Inc.
Republic Storage Co., Inc.
Rex Warehouses, Inc.
C. Rudolph Warehouse Company, Inc.

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NEW YORK (Continued)

Ruhe Storage & Trucking Co., Inc.
H. W. St. John & Co.
Seaboard Storage Corporation
Robert Shaw's U. S. Bonded Warehouses
Shephard Warehouse, Inc.
State Warehouse Co., Inc.
Henry I. Stetler, Inc.
Sunset Warehouses, Inc.
Terminal Warehouse Co.
Towers Warehouses, Inc.
Unity Warehouse Co.
Vestry Warehouses, Inc.
Warwick Thomson Co.

OSWEGO
Wallace Storage Warehouse

ROCHESTER
B. R. & P. Warehouse, Inc.
Blanchard Storage Co., Inc.
C. & D. Warehouse Corp.
Geo. M. Clancy Carting Co., Inc.
Clancy Carting & Storage Co., Inc.
B. G. Costich & Sons, Inc.
Exchange Warehouse Co., Inc.
Rochester Storage Warehouses
Service Storage Co.
The Upton Cold Storage Co., Inc.

SCHENECTADY
Schenectady Storage & Trucking Co.

STAPLETON
Richmond Terminal Trucking Co.

SYRACUSE
Flagg Storage Warehouse Co.
Great Northern Warehouses
King Storage Warehouse Co., Inc.
Shefford Warehouse

UTICA
Broad Street Warehouse Corp.
Jones-Clark Trucking & Storage Co., Inc.
Murray Warehouse Co., Inc.
Utica Warehouse Co., Inc.

WATERTOWN
Marcy-Buck & Winslow, Inc.

YORKVILLE
Utica Warehouse Co.

PENNSYLVANIA

BETHLEHEM
Lehigh & New England Terminal Whse. Co.

PENNSYLVANIA (Continued)

ERIE
Erie Storage & Carting Co.
Fort Erie Warehouse & Docks

HARRISBURG
Harrisburg Warehouse Co.
Montgomery & Co.

HAZELTON
Karn's Transfer & Storage

PHILADELPHIA
Bailey Warehouses
Commercial Warehousing Co
Fenton Storage Co.
Gallagher's Warehouses
General Warehouses Co.
Godley's Storage Warehouses
Merchants Warehouse Co.
Northeastern Warehouse Co.
Pennsylvania Warehousing & Safe Deposit Co.
Phila. Tidewater Terminal
Philadelphia Warehousing & Cold Stge. Co.
Rex & Co., Inc.
Terminal Commerce Building, Inc.
Terminal Warehouse Co.
Traders Warehouse

PITTSBURGH
W. J. Beitler Warehouse
Buley-Patterson-Potts Co.
Consolidated Storage Company
Duquesne Warehouse Co.
Iron City Elevator Co., Inc.
Kirby Transfer & Storage Co.
Pittsburgh Terminal Warehouse & Transfer Co.
South-Side Transfer & Storage Co.
Superior Transfer & Storage Co.
Try Street Terminal Co.
Union Storage Co.
United Storage & Trucking Co.
White Terminal Co.

READING
Columbian Warehouse Co.
Wertz Warehouse Co.

SCRANTON
Quackenbush Warehouse Co.

WILKES-BARRE
Matheson Warehouse Co.
Merchants Warehousing Co.
Wilkes-Barre Warehousing Co.

WILLIAMSPORT
Williamsport Storage Co., Inc.

REGION 3

ALABAMA

ANNISTON
Nixon Transfer & Coal Co.

BIRMINGHAM

FLORIDA

JACKSONVILLE
Central Warehouse & Distributing Co.
Laney & Delcher Storage Co.
Peninsular Warehouse Co.

B. R. & P. Warehouse, Inc.
Blanchard Storage Co., Inc.
C. & D. Warehouse Corp.
Geo. M. Clancy Carting Co., Inc.
Clancy Carting & Storage Co., Inc.
B. G. Costich & Sons, Inc.
Exchange Warehouse Co., Inc.
Rochester Storage Warehouses
Service Storage Co.
The Upton Cold Storage Co., Inc.

SCHENECTADY
Schenectady Storage & Trucking Co.

STAPLETON
Richmond Terminal Trucking Co.

SYRACUSE
Flagg Storage Warehouse Co.
Grest Northern Warehouses
King Storage Warehouse Co., Inc.
Shefford Warehouse

UTICA
Broad Street Warehouse Corp.
Jones-Clark Trucking & Storage Co., Inc.
Murray Warehouse Co., Inc.
Utica Warehouse Co., Inc.

WATERTOWN
Marcy-Buck & Winslow, Inc.

YORKVILLE
Utica Warehouse Co.

PENNSYLVANIA

BETHLEHEM
Lehigh & New England Terminal Whse. Co.
Merchants Warehouse Co.
Northeastern Warehouse Co.
Pennsylvania Warehouseing & Safe Deposit Co.
Phila. Tidewater Terminal
Philadelphia Warehousing & Cold Stge. Co.
Rex & Co., Inc.
Terminal Commerce Building, Inc.
Terminal Warehouse Co.
Traders Warehouse

PITTSBURGH
W. J. Beitler Warehouse
Buley-Patterson-Potts Co.
Consolidated Storage Company
Duquesne Warehouse Co.
Iron City Elevator Co., Inc.
Kirby Transfer & Storage Co.
Pittsburgh Terminal Warehouse & Transfer Co.
South Side Transfer & Storage Co.
Superior Transfer & Storage Co.
Try Street Terminal Co.
Union Storage Co.
United Storage & Trucking Co.
White Terminal Co.

READING
Columbian Warehouse Co.
Wertz Warehouse Co.

SCRANTON
Quackenbush Warehouse Co.

WILKES-BARRE
Matheson Warehouse Co.
Merchants Warehousing Co.
Wilkes-Barre Warehousing Co.

WILLIAMSPORT
Williamsport Storage Co., Inc.

REGION 3

ALABAMA

ANNISTON
Nixon Transfer & Coal Co.

BIRMINGHAM
Acme Storage & Transfer Co.
Alabama Warehousing Co.
Fleming Transfer & Warehouse Co., Inc.
Goodman Transfer & Warehouse Co.
Harris Transfer & Warehouse Co.
Shaw Warehouse Co.
Strickland Transfer & Storage Co.
Wittichen Transfer & Warehouse Co.

MOBILE
Alabama Warehousing Co.
Merchants Transfer Co.
United Warehouse Co., Inc.

MONTGOMERY
Alabama Motor Transfer & Warehouse Co.
Moeller Transfer & Storage Co.

FLORIDA

JACKSONVILLE
Central Warehouse & Distributing Co.
Laney & Delcher Storage Co.
Peninsular Warehouse Co.
Service Warehouse Co., Inc.
Union Terminal Warehouse Co.
Vann Warehouse Co.
Wiesenfeld Warehouse Co.

MIAMI
Apte Brothers
J. F. Chaille Co. Warehouse
A. Earl Clark & Son, Inc.
Fireproof Storage Warehouses, Inc.
Flash Express & Storage Co., Inc.
L. A. Jones, Inc.
Rickert Warehouse & Stge. Co., Inc.
Robbin's Warehouse & Distributing Co.
John E. Withers Transfer & Stge. Co., Inc.

ORLANDO
Fidelity Storage & Warehouse Co.

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FLORIDA (Continued)

PENSACOLA
Ferriss Warehouse & Storage Co.
Ray Hardware & Truck Co. operating the Bonded Whse. Co.

TAMPA
W. L. Blocks
Caldwell Bonded Warehouse Company
Ice Terminal & Warehouse Corp.
Tampa Stevedoring Co., Inc.
Tampa Union Terminal Co.
The Warehouse Inc.

WEST PALM BEACH
Brandon Transfer & Storage Co.

GEORGIA

ATLANTA
Atlanta Service Warehouse
Bonded Service Warehouse
J. A. Campbell, Inc.
Capitol City Warehouse Co.
Food Sales Co., Inc.
Fulton Warehouse Co.
General Warehouse & Storage Co., Inc.
Loeb-Apte Company
M. & M. Warehouse Co., Inc.
Martin & Zeagler, Inc.
Massey & Fair Inc.
Monroe Bonded Warehouses
C. B. Ponder Company
Pyburn Co.
Raley Brothers, Inc.
Security Warehouse Co.
Southeastern Bonded Warehouses
Terminal Warehouse Co.

AUGUSTA
City Bonded Warehouse
Farmers & Merchants Bonded Warehouse

MACON
Washburn Bonded Warehouse, Inc.

SAVANNAH
Savannah Bonded Whse. & Tfr. Co.
South Atlantic Storage Co.

KENTUCKY

CORBIN
A. J. Seibert Co., Inc.

LEXINGTON
Union Transfer & Storage Co.
Vine St. Stge. & Whse. Co.

LOUISVILLE
Denny Motor Transfer Co., Inc.
Falls City Warehouse Co., Inc.
Huber & Huber Motor Express Terminal
Industrial Storage Co., Inc.
Kentucky Term. Whse. & Storage Co.
Lamppin Warehouse Co.
Louisville Public Warehouse Co.
Ninth Street Public Warehouse
A. J. Seibert Co., Inc., Props.
Louisville Sugar House

NORTH CAROLINA

ASHEVILLE
Consolidated Warehouse Co.

CHARLOTTE
American Storage & Warehouse Co.
H. C. Anderson & Sons
Robert R. Beatty
Britt-Shiver-Norcom, Inc.
A. J. Campbell Co.
Carolina Transfer & Storage Co.
Charlotte Distributing Co.
W. J. Edwards & Co.
Kilgo Transfer Co., Inc.
Avery R. Rhyne
Standard Bonded Warehouses
Union Storage & Warehouse Co.

GREENSBORO
South Atlantic Bonded Warehouse Corp.

HIGH POINT
Carolina Bonded Warehouse Co.
High Point Bonded Warehouse Co.

RALEIGH
Carolina Storage & Distributing Co.
Raleigh Bonded Warehouse, Inc.

WINSTON-SALEM
Lentz Transfer & Storage Company

SOUTH CAROLINA

CHARLESTON
Charleston Warehouse & Forwarding Co.
George F. Martin
Piedmont Coastal Motor Express Corp.

COLUMBIA
Boineau's, Inc.
Carolina Bonded Storage Co.
Piedmont Coastal Motor Exp. Corp.

GREENVILLE
F. H. Edwards Co.
Piedmont Coastal Motor Express Corp.
Textile Warehouse Co.

SPARTANBURG
Piedmont Coastal Motor Express Corp.

TENNESSEE

CHATTANOOGA
Arrow Transfer & Storage Co.
Chattanooga Transfer & Storage Co.
Crabtree Transfer & Storage Co., Inc.

EAST CHATTANOOGA
Textile Storage & Warehouse Co.

KNOXVILLE
Fireproof Storage & Van Co.

MEMPHIS
Commercial Storage & Warehouse Co.
Dunbar Transfer & Storage Co., Inc.
General Whse. & Distributing Co.
Memphis Bonded Warehouse Co.
Merchants Warehouse Co.
Industrial Supplies Warehouse
P. & B. Transfer & Stge. Co., Inc.
Patterson Transfer Co.
John H. Poston Stge. Warehouses, Inc.
Rose Warehouse Co.
Southern Bonded Warehouse Co.

Tampa Stevedoring Co., Inc.
Tampa Union Terminal Co.
The Warehouse Inc.

WEST PALM BEACH
Brandon Transfer & Storage Co.

GEORGIA

ATLANTA
Atlanta Service Warehouse
Bonded Service Warehouse
J. A. Campbell, Inc.
Capitol City Warehouse Co.
Food Sales Co., Inc.
Fulton Warehouse Co.
General Warehouse & Storage Co., Inc.
Loeb-Apte Company
M. & M. Warehouse Co., Inc.
Martin & Zeagler, Inc.
Massey & Fair Inc.
Monroe Bonded Warehouses
C. B. Ponder Company
Pyburn Co.
Raley Brothers, Inc.
Security Warehouse Co.
Southeastern Bonded Warehouses
Terminal Warehouse Co.

AUGUSTA
City Bonded Warehouse
Farmers & Merchants Bonded Warehouse

MACON
Washburn Bonded Warehouse, Inc.

SAVANNAH
Savannah Bonded Whse. & Tfr. Co.
South Atlantic Storage Co.

KENTUCKY

CORBIN
A. J. Seibert Co., Inc.

LEXINGTON
Union Transfer & Storage Co.
Vine St. Stge. & Whse. Co.

LOUISVILLE
Denny Motor Transfer Co., Inc.
Falls City Warehouse Co., Inc.
Huber & Huber Motor Express Terminal
Industrial Storage Co., Inc.
Kentucky Term. Whse. & Storage Co.
Lamppin Warehouse Co.
Louisville Public Warehouse Co.
Ninth Street Public Warehouse
A. J. Seibert Co., Inc., Props.
Louisville Sugar House
Tabb Storage Whse. & Frt. Transfer Line

MISSISSIPPI

JACKSON
Ricks Storage Co.

MERIDIAN
Smith Transfer & Storage Co.

VICKSBURG
Z. B. Schwarz & Co.

Charlotte Distributing Co.
W. J. Edwards & Co.
Kilgo Transfer Co., Inc.
Avery R. Rhyne
Standard Bonded Warehouses
Union Storage & Warehouse Co.

GREENSBORO
South Atlantic Bonded Warehouse Corp.

HIGH POINT
Carolina Bonded Warehouse Co.
High Point Bonded Warehouse Co.

RALEIGH
Carolina Storage & Distributing Co.
Raleigh Bonded Warehouse, Inc.

WINSTON-SALEM
Lentz Transfer & Storage Company

SOUTH CAROLINA

CHARLESTON
Charleston Warehouse & Forwarding Co.
George F. Martin
Piedmont Coastal Motor Express Corp.

COLUMBIA
Boineau's, Inc.
Carolina Bonded Storage Co.
Piedmont Coastal Motor Exp. Corp.

GREENVILLE
F. H. Edwards Co.
Piedmont Coastal Motor Express Corp.
Textile Warehouse Co.

SPARTANBURG
Piedmont Coastal Motor Express Corp.

TENNESSEE

CHATTANOOGA
Arrow Transfer & Storage Co.
Chattanooga Transfer & Storage Co.
Crabtree Transfer & Storage Co., Inc.

EAST CHATTANOOGA
Textile Storage & Warehouse Co.

KNOXVILLE
Fireproof Storage & Van Co.

MEMPHIS
Commercial Storage & Warehouse Co.
Dunbar Transfer & Storage Co., Inc.
General Whse. & Distributing Co.
Memphis Bonded Warehouse Co.
Merchants Warehouse Co.
Industrial Supplies Warehouse
P. & B. Transfer & Stge. Co., Inc.
Patterson Transfer Co.
John H. Poston Stge. Warehouses, Inc.
Rose Warehouse Co.
Southern Bonded Warehouse Co.
Tennessee Terminal Warehouses, Inc.
United Warehouse & Terminal Co.
P. H. Vernon Warehouse Co.

NASHVILLE
Bond, Chadwell Co.
Central Van & Storage Co.
The Price-Bass Co.
Nashville Warehouse & Elevator Corp.
Henry W. Sawrie Co.
R. H. White Transfer & Storage Co.

PARIS
Union Transfer Co.

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VIRGINIA

LYNCHBURG
Lynchburg Storage Co.

NEWPORT NEWS
Hiden Storage & Forwarding Co.

NORFOLK
The Bell Storage Co., Inc.
D. D. Jones Transfer & Whse. Co.
Jones Cold Storage Corp.
Norfolk Tidewater Terminals
H. B. Rogers, Inc.
Security Storage & Safe Deposit Co., Inc.
Southgate Storage Co.
Virginia-Carolina Storage Corp.
West Storage Co.

PETERSBURG
Petersburg Bonded Warehouse Corp.

RICHMOND
Terminal Storage Corp.
Virginia Bonded Whse. Corp.

VIRIGINA (Continued)

ROANOKE
H. L. Lawson, Jr., Finance & Storage Co.
Pitzer Transfer Corp.
Roanoke Public Warehouse.

WEST VIRGINIA

BLUEFIELD
City Warehouse Co.
Flat Top Warehouse Company
General Storage Co.

CHARLESTON
Elk Storage Warehouse Co.
Nelson Transfer & Storage Co.

CLARKSBURG
Central Storage Co.

HUNTINGTON
Maier Sales & Storage Co.

WHEELING
Union Warehouse Holding Co.

REGION 4

ILLINOIS

AURORA
Martin Transfer & Storage Co., Inc.
Valentine Transfer & Storage Co.

BELLEVILLE
W. L. Batdorf & Co.
F. J. Hessler & Sons, Inc.

BLOOMINGTON
The Johnson Transfer & Fuel Co.

CAIRO
Cairo River & Rail Warehouses
Halliday Warehouse Co.
Pink & Co., Inc.

CHAMPAIGN
Champaign Stge. & Whse. Co.
McArty Storage Co.

CHICAGO
Anchor Storage Co.
C & A Terminal Warehouse Co.
Central Storage & Forwarding Co.
Crooks Terminal Warehouses
Currier-Lee Warehouse Co.
Dietrich Warehousing Co.
Empire Warehouses, Inc.
Goold Storage Co.
Griswold-Walker-Bateman Co.
Herrmann Warehouse Co.
Illinois Warehouse Co.
Kel-Mer Warehouse Company
E. E. Kendall Company
Edward Lasham Co.
Loop River & Rail Terminal Warehouse
Midland Warehouse & Transfer Co.
Mitchell-Jackson, Inc.
North Central Terminals Co.
North Pier Terminals Co.
Ontario Warehouse Co.
Orleans-Ontario Warehouse
Producers Warehouse Co.
Railway Terminal & Warehouse Co.

ILLINOIS (Continued)

DECATUR
Decatur Warehouse Co.

EAST ST. LOUIS
McMahon Transfer Co.
Mississippi Avenue Warehouses

ELGIN
Elgin Storage & Transfer Co.

JACKSONVILLE
Jacksonville Transfer & Stge. Co., Inc.

JOLIET
Joliet Warehouse & Transfer Co.

KANKAKEE
Belt Route, Warehouse & Stge. Co.

KEWANEE
Mayhew & Wedge

MOLINE
Crandall Transfer & Whse. Co.

OTTAWA
Scherer Bros. Transfer & Stge., Inc.

PANA
Roley Bros. Transfer Co.

PEKIN
Kriegsman Transfer Co.

PEORIA
Federal Warehouse Co.

PERU
H. J. Tobler Transfer Line

PRINCETON

Virginia-Carolina Storage Corp.
West Storage Co.

PETERSBURG
Petersburg Bonded Warehouse Corp.

RICHMOND
Terminal Storage Corp.
Virginia Bonded Whse. Corp.

Elk Storage Warehouse Co.
Nelson Transfer & Storage Co.

CLARKSBURG
Central Storage Co.

HUNTINGTON
Maier Sales & Storage Co.

WHEELING
Union Warehouse Holding Co.

REGION 4

ILLINOIS

AURORA
Martin Transfer & Storage Co., Inc.
Valentine Transfer & Storage Co.

BELLEVILLE
W. L. Batdorf & Co.
F. J. Hessler & Sons, Inc.

BLOOMINGTON
The Johnson Transfer & Fuel Co.

CAIRO
Cairo River & Rail Warehouses
Halliday Warehouse Co.
Pink & Co., Inc.

CHAMPAIGN
Champaign Stge. & Whse. Co.
McArty Storage Co.

CHICAGO
Anchor Storage Co.
C & A Terminal Warehouse Co.
Central Storage & Forwarding Co.
Crooks Terminal Warehouses
Currier-Lee Warehouse Co.
Dietrich Warehousing Co.
Empire Warehouses, Inc.
Gould Storage Co.
Griswold-Walker-Bateman Co.
Herrmann Warehouse Co.
Illinois Warehouse Co.
Kel-Mer Warehouse Company
E. E. Kendall Company
Edward Lasham Co.
Loop River & Rail Terminal Warehouse
Midland Warehouse & Transfer Co.
Mitchell-Jackson, Inc.
North Central Terminals Co.
North Pier Terminals Co.
Ontario Warehouse Co.
Orleans-Ontario Warehouse
Producers Warehouse Co.
Railway Terminal & Warehouse Co.
Republic Warehouse Company
Seng Terminal Warehouse Co.
Soo Terminal Warehouse
South End Warehouse Co.
Sykes Terminal Warehouse
Thompson Terminal Warehouses, Inc.
Tooker Storage & Forwarding Co.
Twin City Trading Co.
Wakem & McLaughlin, Inc.
Western Warehousing Co.

DANVILLE
Danville Transfer & Storage Co.

ILLINOIS (Continued)

DECATUR
Decatur Warehouse Co.

EAST ST. LOUIS
McMahon Transfer Co.
Mississippi Avenue Warehouses

ELGIN
Elgin Storage & Transfer Co.

JACKSONVILLE
Jacksonville Transfer & Stge. Co., Inc.

JOLIET
Joilet Warehouse & Transfer Co.

KANKAKEE
Belt Route, Warehouse & Stge. Co.

KEWANEE
Mayhew & Wedge

MOLINE
Crandall Transfer & Whse. Co.

OTTAWA
Scherer Bros. Transfer & Stge., Inc.

PANA
Roley Bros. Transfer Co.

PEKIN
Kriegsman Transfer Co.

PEORIA
Federal Warehouse Co.

PERU
H. J. Tobler Transfer Line

PRINCETON
Larson Seed House

QUINCY
King Transfer Line

ROCKFORD
Bartlett Storage Warehouse
Lawson Transfer & Storage
Richards Storage & Van Company

ROCK ISLAND
Rock Island Transfer & Storage Co.
Voss Bros. Express & Storage

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ILLINOIS (Continued).

SPRINGFIELD
Wm. H. Edwards
Hillier Storage Co.
Merchants Transfer & Storage Co.
Weidlocher & Sons, Inc.

STERLING
John Clayton Batteiger

STREATOR
Johnson Transfer & Storage Co.

TAYLORVILLE
H. R. Rinker

WAUKEGAN
Waukegan Terminal Whse. Co.

INDIANA

EVANSVILLE
Broker Warehouse Co., Inc.
Evansville Warehouse Co.
Lex Terminal Warehouse Co.
Mead Johnson Terminal Corp.
The Terminal Warehouse Co., Inc.

FORT WAYNE
Fort Wayne Storage Co.
Pettit's Storage Warehouse Co.

GARY
Gary Warehouse Co.

HAMMOND
Chapin & Co.
Great Lakes Warehouse Corp.

INDIANAPOLIS
Central Public Warehouse Co.
Central Transfer & Storage Co., Inc.
Henry Coburn Storage & Whse. Co.
Indiana Terminal & Refrigerating Co.
The Lauter Warehouse Co.
Mann Transfer & Storage Co., Inc.
Strohm Warehouse & Cartage Co.
Tripp Warehouse Co.
Warehouse Distributing Corp.

MUNCIE
Delaware Trucking Co., Inc.

NEW ALBANY
Denny Motor Transfer Co.

RICHMOND
Forest Monger

SOUTH BEND
Grand Trunk Terminal Warehouse Co.
National Storage Warehouse Co.
Ullery Storage Warehouse Co.

MICHIGAN

BAY CITY
Riverside Truck & Storage Co.
P. Van Haaren & Sons Storage Co., Inc.

DETROIT
Central Detroit Warehouse Co.

MICHIGAN (Continued)

GRAND RAPIDS
Columbian Storage & Transfer Co.
Kent Storage Co.
Merchants Storage & Transfer Co., Inc.
Richards Storage Corporation
Star Transfer Line

LANSING
Fireproof Storage Co.

MUSKEGON
Richards Storage Corp.

PORT HURON
United Trucking Service, Inc.

SOUTH HAVEN
South Haven Term. Co., Inc.

OHIO

ASHTABULA
Ashtabula Fireproof Storage Co., Inc.

CANTON
Canton Storage, Inc.
Cummins Storage Co.
McKinley Storage & Transfer Co.
W. H. Schneider Storage Co.

CINCINNATI
Baltimore & Ohio Warehouse Co.
The Cincinnati Ice Mfg. & Cold Stge. Co.
Cincinnati Merchandise Warehouses, Inc.
Cincinnati Storage & Whse. Co., Inc.
Cincinnati Terminal Warehouses, Inc.
The Cincinnati Transfer Co.
Front & Butler Warehouses, Inc.
Meinch Drayage Co.
The Wallace Transfer & Forwarding Co.

CLEVELAND
Central Storage Warehouse Co.
The Cleveland Storage Co.
Consolidated Cartage & Storage Co.
The Curtis Bros. Transfer Co.
The Distr. Term. & Cold Storage Co.
The East 45th St. Warehouse Co.
William Edwards Co.
Greeley-General Warehouse Co.
Greeley Terminal Co.
Lederer Terminal Warehouse Co.
National Terminals Corp.
The Ohio Terminal Co.
Security Warehouse & Cartage, Inc.
The Sheriff St. Mkt. & Storage Co.
The Valley Warehouse Co.

COLUMBUS
Columbus Terminal Warehouse Co.
Columbus Warehouses, Inc.
The Kutschbach-McNally Co.
The Merchandise Warehouse Co.
The Neilston Warehouse Co.

DAYTON
Cincinnati Storage & Warehouse Co., Inc.

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H. R. Rinker

WAUKEGAN
Waukegan Terminal Whse. Co.

INDIANA

EVANSVILLE
Broker Warehouse Co., Inc.
Evansville Warehouse Co.
Lex Terminal Warehouse Co.
Mead Johnson Terminal Corp.
The Terminal Warehouse Co., Inc.

FORT WAYNE
Fort Wayne Storage Co.
Pettit's Storage Warehouse Co.

GARY
Gary Warehouse Co.

HAMMOND
Chapin & Co.
Great Lakes Warehouse Corp.

INDIANAPOLIS
Central Public Warehouse Co.
Central Transfer & Storage Co., Inc.
Henry Coburn Storage & Whse. Co.
Indiana Terminal & Refrigerating Co.
The Lauter Warehouse Co.
Mann Transfer & Storage Co., Inc.
Strohm Warehouse & Cartage Co.
Tripp Warehouse Co.
Warehouse Distributing Corp.

MUNCIE
Delaware Trucking Co., Inc.

NEW ALBANY
Denny Motor Transfer Co.

RICHMOND
Forest Monger

SOUTH BEND
Grand Trunk Terminal Warehouse Co.
National Storage Warehouse Co.
Ullery Storage Warehouse Co.

MICHIGAN

BAY CITY
Riverside Truck & Storage Co.
P. Van Haaren & Sons Storage Co., Inc.

DETROIT
Central Detroit Warehouse Co.
Detroit Harbor Terminals, Inc.
Detroit Refrigerating Co.
Edgar's Sugar House, Inc.
Federal Warehouse Co.
Grand Trunk Ry. Terminal & Cold Stge. Co.
The John Henry & Schram Storage & Trucking Co.
Jefferson Terminal Warehouse
Riverside Storage & Cartage Co.
Superior Warehouse Co.
United States Warehouse Co.
Wayne Warehouse Company
G. B. Weaver & Co., Inc.

FLINT
Central Warehouse Co.

PORT HURON
United Trucking Service, Inc.

SOUTH HAVEN
South Haven Term. Co., Inc.

OHIO

ASHTABULA
Ashtabula Fireproof Storage Co., Inc.

CANTON
Canton Storage, Inc.
Cummins Storage Co.
McKinley Storage & Transfer Co.
W. H. Schneider Storage Co.

CINCINNATI
Baltimore & Ohio Warehouse Co.
The Cincinnati Ice Mfg. & Cold Stge. Co.
Cincinnati Merchandise Warehouses, Inc.
Cincinnati Storage & Whse. Co., Inc.
Cincinnati Terminal Warehouses, Inc.
The Cincinnati Transfer Co.
Front & Butler Warehouses, Inc.
Meinch Drayage Co.
The Wallace Transfer & Forwarding Co.

CLEVELAND
Central Storage Warehouse Co.
The Cleveland Storage Co.
Consolidated Cartage & Storage Co.
The Curtis Bros. Transfer Co.
The Distr. Term. & Cold Storage Co.
The East 45th St. Warehouse Co.
William Edwards Co.
Greeley-General Warehouse Co.
Greeley Terminal Co.
Lederer Terminal Warehouse Co.
National Terminals Corp.
The Ohio Terminal Co.
Security Warehouse & Cartage, Inc.
The Sheriff St. Mkt. & Storage Co.
The Valley Warehouse Co.

COLUMBUS
Columbus Terminal Warehouse Co.
Columbus Warehouses, Inc.
The Kutschbach-McNally Co.
The Merchandise Warehouse Co.
The Neilston Warehouse Co.

DAYTON
Cincinnati Storage & Warehouse Co., Inc.
Union Storage Co.

HAMILTON
Cincinnati Storage & Warehouse Co., Inc.

LIMA
Lima Truck & Storage Co.

MIDDLETOWN
Cincinnati Storage & Warehouse Co., Inc.

SPRINGFIELD
Wagner Warehouse Corporation

STEUBENVILLE
Jefferson Storage Warehouse Co.

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OHIO (Continued)

TOLEDO
- Brundage Bros. Co.
- The Sam Davis Co.
- Great Lakes Terminal Whse. Co. of Toledo
- Habor Terminals, Inc.
- Merchants & Manufacturers Warehouse Co.
- Moreton Storage Co.
- National Terminals Corp.
- Toledo Terminal Warehouse Co.

YOUNGSTOWN
- Fisher-Gilder Cartage & Storage Co.
- Youngstown-Erie Terminal Co.

WISCONSIN

EAU CLAIRE
- Sioux Storage & Forwarding Co.

GREEN BAY
- Brown County Warehouses, Inc.
- Leicht Transfer & Storage Co.
- Jules Peters Transfer & Storage Co.

WISCONSIN (Continued)

LA CROSSE
- Gateway City Trans. & Stge. Co.
- La Crosse Terminal Warehouse Co.

MILWAUKEE
- Atlas Storage Co.
- Badger Storage Warehouse Co.
- Barclay Warehouse Co.
- Barry Transfer & Storage Co., Inc.
- Carlson Storage Co.
- Courteen Seed Co.
- Hansen Storage Co.
- Lincoln Fireproof Warehouse Co.
- Milwaukee Transfer & Storage Co.
- National Terminals Corp.
- National Warehouse Corp.
- Roegge Storage & Delivery Co.
- L. Teweles Seed Co.

OSHKOSH
- Oshkosh Storage Co.

RACINE
- Ross Moving & Storage Co.

SHEBOYGAN
- Sheboygan Furniture Forwarding Co.

REGION 5

SUPERIOR, WISCONSIN

SUPERIOR
- Hill Warehouse & Tracking Co.
- Superior and Duluth Transfer Co.

MINNESOTA

DULUTH
- Duluth Van & Storage Co.
- McDougall Terminal & Cold Storage Co.
- Northern Cold Storage & Warehouse Co.
- Security Storage & Van Co.

MANKATO
- Jessup Transfer & Storage Co.

MINNEAPOLIS
- Anchor Warehouse, Inc.
- Cameron Transfer & Storage Co.
- Colonial Warehouses, Inc.
- Great Northern Warehouse Co., Inc.
- Kedney Warehouse Co.
- Merchants Cold Storage Co.
- Minneapolis Terminal Warehouse Co.
- Northwest Warehousing Co.
- Northwestern Terminal Co.
- Security Warehouse Co.
- Sterling Cartage Company
- Twin City Trading Co.
- Widholm Transfer & Storage Co.

MOORHEAD
- Moorhead Storage & Transfer Co.

ST. PAUL
- Central Warehouse Co.
- Fidelity Storage & Transfer Co.
- Kedney Warehouse Co.
- St. Paul Terminal Warehouse Co.

MONTANA (Continued)

BUTTE
- Bertoglio & McTaggart Stge. Co.
- Christie Transfer & Storage Co.
- Jones Storage & Transfer Co., Inc.

GREAT FALLS
- Great Falls Transfer & Storage Co.

HELENA
- Diamond "C" Transfer

MISSOULA
- Reely's Storage & Transfer

NORTH DAKOTA

BISMARCK
- Wachter Transfer Corp.

FARGO
- Adams Transfer & Storage
- Union Storage & Transfer Co.

GRAND FORKS
- Kedney Warehouse Co. of North Dakota

JAMESTOWN
- Jamestown Warehouse Co.

SOUTH DAKOTA

ABERDEEN
- Jobbers Warehouse, Ward-Owsley Company, Inc.

RAPID CITY

REGION 6

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IOWA

AMES
Dragoun Transfer & Storage Co.

BOONE
Wilson's Transfer & Storage

CEDAR RAPIDS
American Transfer & Storage Co.
Calder's Van & Storage Co., Inc.
P. J. Ernst Auto Storage
Cedar Rapids Transfer & Storage Co.
Lynch Transfer Co., Inc.
Ben H. Witwer

CLINTON
Carstensen Transfer & Storage

COUNCIL BLUFFS
Ford Bros. Van & Storage Co.

DAVENPORT
Ewert & Richter Exp. & Stge. Co.
Merchants Transfer & Storage Co.
Roederer Transfer & Storage Co.

DES MOINES
Blue Line Storage Co.
Hawkeye Transfer Co., Inc.
Merchants Transfer & Storage Co.
Ware Transfer & Storage Co.
White Line Transfer & Storage Co.

DUBUQUE
The Martin-Streiau Co.

FORT DODGE
Brady Transfer & Storage Co.
White Transfer & Storage Co.

MASON CITY
Cadwell Transfer & Storage Co.

SHELDON
McKay & Krahling

SIOUX CITY
Bekins Merchandise Storage
Dougherty Storage & Van Co.
Sioux City Storage & Forwarding Co.

KANSAS

DODGE CITY
Dodge City Transfer & Storage Company
Woolwine's Transfer & Storage Co.

EMPORIA
L. R. Bailey Transfer & Storage Co.

KANSAS CITY
Grandview Club Trans. & Storage Co.

PARSONS
Parsons Cold Storage Co.

PITTSBURG
Merchants Transfer & Warehouse Co.
Pittsburg Transfer & Storage Co.

MISSOURI

CARTHAGE
Carthage Transfer & Storage Co.

JOPLIN
Joplin Transfer & Storage Co.
Tonnies Transfer & Storage Co.

KANSAS CITY
Abner Hood Chemical Co.
A-B-C Fireproof Warehouse Co.
Adams Transfer & Storage Co.
Central Storage Co.
Crooks Terminal Warehouses
Empire Storage & Ice Co.
Evans Transfer & Stge. Co.
Kansas City Power & Light Co.
Liberty Storage Co.
W. E. Murray Transfer & Storage Co.
The Mutual Transfer Co.
The Only Way Transfer & Warehouse Co.
Radial Warehouse Co.
Rairdon Transfer & Warehouse Co.
The Rhodes Implement Co.
H. H. Smith Storage Co.
United Warehouse Co.
Walnut Storage & Distributing Co.

ST. JOSEPH
Brown Transfer & Storage Co.
St. Joseph Transfer & Stge. Co.
Terminal Warehouses of St. Joseph, Inc.

ST. LOUIS
Arrow Storage Co., Inc.
Booth Cold Storage Co.
Broadway Terminal Warehouse Corp.
Central Terminal Co.
Columbia Terminal Co.
Grocer's Warehouse Company.
Howland Warehouse Company
S. N. Long Warehouse Co.
McPheeter's Warehouse Co.
Missouri Warehousing Co.
Rutger St. Warehouse, Inc.
St. Louis Distributing Whse. Co.
St. Louis Mart, Inc.
St. Louis Terminal Warehouse Co.
Talbot Terminal Warehouse Co.
Tyler Warehouse Co.

SPRINGFIELD
Finkbiner Transfer & Storage Co.
Springfield Warehouse & Transfer Co.

NEBRASKA

BEATRICE
A. Palmer Company

COLUMBUS
Columbus Fuel & Storage Company

FREMONT
Union Transfer Co.

HASTINGS
Borley Storage & Transfer Co., Inc.

LINCOLN

Calder's Van & Storage Co., Inc.
P. J. Ernst Auto Storage
Cedar Rapids Transfer & Storage Co.
Lynch Transfer Co., Inc.
Ben H. Witwer

CLINTON
Carstensen Transfer & Storage

COUNCIL BLUFFS
Ford Bros. Van & Storage Co.

DAVENPORT
Ewert & Richter Exp. & Stge. Co.
Merchants Transfer & Storage Co.
Roederer Transfer & Storage Co.

DES MOINES
Blue Line Storage Co.
Hawkeye Transfer Co., Inc.
Merchants Transfer & Storage Co.
Ware Transfer & Storage Co.
White Line Transfer & Storage Co.

DUBUQUE
The Martin-Strelau Co.

FORT DODGE
Brady Transfer & Storage Co.
White Transfer & Storage Co.

MASON CITY
Cadwell Transfer & Storage Co.

SHELDON
McKay & Krahling

SIOUX CITY
Bekins Merchandise Storage
Dougherty Storage & Van Co.
Sioux City Storage & Forwarding Co.

KANSAS

DODGE CITY
Dodge City Transfer & Storage Company
Woolwine's Transfer & Storage Co.

EMPORIA
L. R. Bailey Transfer & Storage Co.

KANSAS CITY
Grandview Club Trans. & Storage Co.

PARSONS
Parsons Cold Storage Co.

PITTSBURG
Merchants Transfer & Warehouse Co.
Pittsburg Transfer & Storage Co.

SALINA
Stevenson Transfer Co.

TOPEKA
Kansas Transfer & Storage Co.
Topeka Transfer & Storage Co.

WICHITA
Broker's Office & Warehouse Co.
The Cassell Transfer & Storage Co.
Merchants Transfer & Whse. Co., Inc.
Peoples Transfer & Storage Co.
United Warehouse Co.
Wichita Yellow Cab Co., Inc.

Abner Hood Chemical Co.
A-R-C Fireproof Warehouse Co.
Adams Transfer & Storage Co.
Central Storage Co.
Crooks Terminal Warehouses
Empire Storage & Ice Co.
Evans Transfer & Stge. Co.
Kansas City Power & Light Co.
Liberty Storage Co.
W. E. Murray Transfer & Storage Co.
The Mutual Transfer Co.
The Only Way Transfer & Warehouse Co.
Radial Warehouse Co.
Rairdon Transfer & Warehouse Co.
The Rhodes Implement Co.
H. H. Smith Storage Co.
United Warehouse Co.
Walnut Storage & Distributing Co.

ST. JOSEPH
Brown Transfer & Storage Co.
St. Joseph Transfer & Stge. Co.
Terminal Warehouses of St. Joseph, Inc.

ST. LOUIS
Arrow Storage Co., Inc.
Booth Cold Storage Co.
Broadway Terminal Warehouse Corp.
Central Terminal Co.
Columbia Terminal Co.
Grocer's Warehouse Company
Howland Warehouse Company
S. N. Long Warehouse Co.
McPheeter's Warehouse Co.
Missouri Warehousing Co.
Rutger St. Warehouse, Inc.
St. Louis Distributing Whse. Co.
St. Louis Mart, Inc.
St. Louis Terminal Warehouse Co.
Talbot Terminal Warehouse Co.
Tyler Warehouse Co.

SPRINGFIELD
Finkbiner Transfer & Storage Co.
Springfield Warehouse & Transfer Co.

NEBRASKA

BEATRICE
A. Palmer Company

COLUMBUS
Columbus Fuel & Storage Company

FREMONT
Union Trapsfer Co.

HASTINGS
Borley Storage & Transfer Co., Inc.

LINCOLN
Star Van & Storage Co.
Sullivan Transfer & Storage Co.
Union Terminal Warehouse Co.

OMAHA
Bekins Van & Storage Co.
Bushman Warehouse & Storage Co.
Central Storage & Van Co.
Fidelity Storage & Van Co., Inc.
Ford Bros. Van & Storage Co.
Gordon Storage Warehouses, Inc.
Knowles Storage & Moving Co.
Pacific Storage & Warehouse Co.
The Terminal Warehouse Co.
Trimble Brothers

REGION 7

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ARKANSAS

FORT SMITH
Arkansas Warehouse Co.
O. K. Transfer & Storage Co.

LITTLE ROCK
Commercial Warehouse Co.
Merchants Transfer & Warehouse Co.
Terminal Warehouse Co.

TEXARKANA
Hunter Transfer & Storage Co.

LOUISIANA

ALEXANDRIA
Carnahan's Transfer & Storage Co.
Trousdale, Wright & Keller, Inc.

LAKE CHARLES
United Whse. & Forwarding Co., Inc.

MONROE
Faulk-Collier Bonded Warehouses, Inc.
Monroe Transfer & Whse. Co., Inc.
Trousdale & Wright, Inc.

NEW ORLEANS
Acme Warehouses
Appalachian Warehouses
Army Base Unit No. 2, Douglas Shipside Storage Corp.
Bienville Warehouse Corporation
Commercial Terminal Warehouse Co.
Gottam Block Warehouse
Dietrich & Wiltz, Inc.
Douglas Public Service Corp.
Douglas Shipside Storage Corp.
Importers Bonded Warehouse
Independent Warehouse Co., Inc.
Kentucky Coffee Warehouse Co.
Maloney Trucking & Storage, Inc.
Orleans Warehouses Corp., Inc.
Pelican C. S. & Warehousing Co., Ltd.
Rebecca-Fabacher, Inc.
Riverside Warehouses, Inc.
Shipside Storage Co., Inc.
Standard Warehouse Co., Inc.

SHREVEPORT
Caddo Transfer & Warehouse Co., Inc.
Herrin Transfer & Warehouse Co., Inc.
McGee Warehouse & Storage Co.
O. K. Storage & Van Co., Inc.
Terminal Warehouse & Trf. Co., Inc.

NEW MEXICO

ALBUQUERQUE
Shufflebarger Transfer & Storage Co., Inc.
Springer Transfer Co., Inc.

OKLAHOMA

ADA
Couch Transfer & Storage Co.

OKLAHOMA (Continued)

OKLAHOMA CITY
Commercial Warehouse Co.
O. K. Transfer & Storage Co.
Oklahoma Bonded Warehouse
The Public Warehouse Co.
Red Ball, Inc.
Reliable Van & Warehouse Co.

TULSA
Federal Storage & Van Co.
Joe Hodges Fireproof Warehouses
Nichols Transfer & Storage Co.
Tulsa Terminal Storage & Transfer Co.

TEXAS

ABILENE
Abilene Storage Co.
J. D. Moore Transfer & Storage
W. T. Wilson Transfer & Storage Co.

AMARILLO
Amarillo Warehouse Co.
American Warehouse & Storage Co.
Armstrong Transfer & Storage Co., Inc.
Bishop Warehouse & Storage Co.
M. & L. Transfer & Storage Co.
McKnight Transfer, Livery & Sales Co.

AUSTIN
Merchants Transfer & Storage Co.
Patton's, Inc. Operating as Patton Transfer Co.
Scobey Fireproof Storage Co.

BEAUMONT
Heisig Storage & Transfer Co.
Terminal Warehouse & Storage Co.

BROWNSVILLE
Jones Transfer & Storage Co.

CORPUS CHRISTI
Corpus Christi Transfer Co., Inc.
Corpus Christi Whse. & Storage Co.
Crocker Transfer & Storage Co.
Lone Star Warehouse & Storage
State Bonded Warehouse Co.

CORSICANA
Corsicana-Trinity Warehouse Co.

DALLAS
American Transfer & Storage Co.
Bityon-O'Keefe Fireproof Storage Co.
Dallas Transfer & Terminal Whse. Co.
Dallas-Trinity Warehouse Co.
Gillette Transfer & Storage Co.
Interstate Fireproof Stge. & Transfer Co.
Koon-McNatt Storage & Transfer Co.
Merchants Cold Storage Co.
Morgan Warehouse & Commercial Co.
Preston Warehouse
Service Warehouse Co.
Shannon Warehouse Service
The Shippers Warehouse Co.
Sproles Transfer & Storage Co.

EDINBURG
Jones Transfer & Storage Co.

EL PASO
Achteberg Warehouse Co.
El Paso Fireproof Storage Co.

LOUISIANA

ALEXANDRIA
Carnahan's Transfer & Storage Co.
Trousdale, Wright & Keller, Inc.

LAKE CHARLES
United Whse. & Forwarding Co., Inc.

MONROE
Faulk-Collier Bonded Warehouses, Inc.
Monroe Transfer & Whse. Co., Inc.
Trousdale & Wright, Inc.

NEW ORLEANS
Acme Warehouses
Appalachian Warehouses
Army Base Unit No. 2, Douglas Shipside Storage Corp.
Bienville Warehouse Corporation
Commercial Terminal Warehouse Co.
Cottam Block Warehouse
Dietrich & Wiltz, Inc.
Douglas Public Service Corp.
Douglas Shipside Storage Corp.
Importers Bonded Warehouse
Independent Warehouse Co., Inc.
Kentucky Coffee Warehouse Co.
Maloney Trucking & Storage, Inc.
Orleans Warehouses Corp., Inc.
Pelican C. S. & Warehousing Co., Ltd.
Rebecca-Fabacher, Inc.
Riverside Warehouses, Inc.
Shipside Storage Co., Inc.
Standard Warehouse Co., Inc.

SHREVEPORT
Caddo Transfer & Warehouse Co., Inc.
Herrin Transfer & Warehouse Co., Inc.
McGee Warehouse & Storage Co.
O. K. Storage & Van Co., Inc.
Terminal Warehouse & Trf. Co., Inc.

NEW MEXICO

ALBUQUERQUE
Shufflebarger Transfer & Storage Co., Inc.
Springer Transfer Co., Inc.

OKLAHOMA

ADA
Couch Transfer & Storage Co.

CHICKASHA
Painter Transfer & Storage Co.

CLINTON
Clinton Transfer & Storage Co.

GUTHRIE
Fairfield Transfer

MUSKOGEE
Muskogee Transfer & Storage Co.

[illegible] Transfer & Storage Co.
Tulsa Terminal Storage & Transfer Co.

TEXAS

ABILENE
Abilene Storage Co.
J. D. Moore Transfer & Storage
W. T. Wilson Transfer & Storage Co.

AMARILLO
Amarillo Warehouse Co.
American Warehouse & Storage Co.
Armstrong Transfer & Storage Co., Inc.
Bishop Warehouse & Storage Co.
M. & L. Transfer & Storage Co.
McKnight Transfer, Livery & Sales Co.

AUSTIN
Merchants Transfer & Storage Co.
Patton's, Inc. Operating as Patton Transfer Co.
Scobey Fireproof Storage Co.

BEAUMONT
Heisig Storage & Transfer Co.
Terminal Warehouse & Storage Co.

BROWNSVILLE
Jones Transfer & Storage Co.

CORPUS CHRISTI
Corpus Christi Transfer Co., Inc.
Corpus Christi Whse. & Storage Co.
Crocker Transfer & Storage Co.
Lone Star Warehouse & Storage
State Bonded Warehouse Co.

CORSICANA
Corsicana-Trinity Warehouse Co.

DALLAS
American Transfer & Storage Co.
Binyon-O'Keefe Fireproof Storage Co.
Dallas Transfer & Terminal Whse. Co.
Dallas-Trinity Warehouse Co.
Gillette Transfer & Storage Co.
Interstate Fireproof Stge. & Transfer Co.
Koon-McNatt Storage & Transfer Co.
Merchants Cold Storage Co.
Morgan Warehouse & Commercial Co.
Preston Warehouse
Service Warehouse Co.
Shannon Warehouse Service
The Shippers Warehouse Co.
Sproles Transfer & Storage Co.

EDINBURG
Jones Transfer & Storage Co.

EL PASO
Achteberg Warehouse Co.
El Paso Fireproof Storage Co.
International Warehouse Co., Inc.
Charles G. Schnaibel
Security Fireproof Storage Co.

FORT WORTH
Binyon-O'Keefe Fireproof Storage Co.
Ft. Worth-Trinity Warehouse Co.
Fort Worth Warehouse & Storage Co.
Sproles Transfer & Storage Co.
O. K. Warehouse Co., Inc.
Texas & Pacific Terminal Whse. Co.

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TEXAS (Continued)

GALVESTON
Wiley & Nicholls Co.

HARLINGEN
Jones Transfer & Storage Co.

HOUSTON
American Bonded Warehouse Co.
Buffalo Warehouse Co.
Herrin Transfer & Warehouse Co.
Houston Central Warehouse Co., Inc.
Houston Port Warehouse Co.
Houston Terminal Whse. & Cold Stge. Co.
E. A. Hudson Transfer & Warehouse Co., Inc.
Manchester Terminal Corp.
Patrick Transfer & Storage Co.
Port Warehouse & Forwarding Co.
Texas Port City Stge. & Trans. Co., Inc.
Texas Warehouse Co.
The Tidewater Warehouse Co., Inc.
Union Transfer & Storage Co.
Universal Terminal Warehouse Co.
Wald Transfer & Storage Co.
Westheimer Transfer & Storage Co.

LUBBOCK
Armstrong Transfer & Storage Co., Inc.
Western Transfer & Storage Co.

McALLEN
McAllen Transfer & Storage Co.
Jones Transfer & Storage Co.

TEXAS (Continued)

PARIS
Paris Transfer & Storage Co.

PLAINVIEW
Plainview Warehouse & Storage Co.

SAN ANGELO
San Angelo Transfer Co.

SAN ANTONIO
Central Warehouse & Storage Co., Inc.
Linnartz & Frey, Inc.
Merchants Transfer & Storage Co.
Muegge-Jenull Warehouse Co.
Scobey Fireproof Storage Co.
Security Bonded Warehousing Co.
Southern Transfer Co., Inc.
State Bonded Warehouse Co.

SWEETWATER
Sweetwater Transfer Co.

TYLER
Tarry Transfer & Storage Company
Tyler Warehouse & Transfer Co.

WACO
Sproles Transfer & Storage Co.
Texas Fireproof Storage Co.

WICHITA FALLS
Sproles Transfer & Warehouse Co.
Tarry Warehouse & Storage Co., Inc.

REGION 8

COLORADO

ALAMOSA
W. A. Jones Transfer Co.

COLORADO SPRINGS
The Pikes Peak Warehousing Co.
The Wandell & Lowe Trf. & Stge. Co.

DENVER
Bankers Warehouse Co.
Colorado Warehouse Co.
Duffy Storage & Moving Co.
Kennicott Patterson Warehouse Corp.
Morgan Transfer & Storage Co.
Morris Warehouse Co.
North Denver Transfer & Storage Co.
Rocky Mountain Warehouse Co.
Security Storage Co., Inc.
United States Transfer & Storage Warehouse Co.
Weicker Transfer & Storage Co.

GRAND JUNCTION
J. W. Milne Transfer & Storage
E. W. Terrill Transfer & Storage

COLORADO (Continued)

PUEBLO
Burch Warehouse & Transfer Co.
J. W. Pearson Company

TRINIDAD
Pople Transfer & Storage Co.

UTAH

OGDEN
Interstate Terminal Warehouse Co.
Western Gateway Storage Co.

SALT LAKE CITY
Central Warehouse
Hadley Transfer & Storage Co.
Jennings-Cornwall Warehouse Co.
M. A. Keyser Fireproof Storage Co.
Korns Warehouse Co.
Redman Van & Storage Co.
Security Storage & Commission Co.

WYOMING

CHEYENNE
Barlow Bros. Transfer
The Cheyenne Transfer & Storage Co.

REGION 9

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Port Warehouse & Forwarding Co.
Texas Port City Stge. & Trans. Co., Inc.
Texas Warehouse Co.
The Tidewater Warehouse Co., Inc.
Union Transfer & Storage Co.
Universal Terminal Warehouse Co.
Wald Transfer & Storage Co.
Westheimer Transfer & Storage Co.

LUBBOCK
Armstrong Transfer & Storage Co., Inc.
Western Transfer & Storage Co.

McALLEN
McAllen Transfer & Storage Co.
Jones Transfer & Storage Co.

SWEETWATER
Sweetwater Transfer Co.

TYLER
Tarry Transfer & Storage Company
Tyler Warehouse & Transfer Co.

WACO
Sproles Transfer & Storage Co.
Texas Fireproof Storage Co.

WICHITA FALLS
Sproles Transfer & Warehouse Co.
Turry Warehouse & Storage Co.; Inc.

REGION 8

COLORADO

ALAMOSA
W. A. Jones Transfer Co.

COLORADO SPRINGS
The Pikes Peak Warehousing Co.
The Wandell & Lowe Trf. & Stge. Co.

DENVER
Bankers Warehouse Co.
Colorado Warehouse Co.
Duffy Storage & Moving Co.
Kennicott Patterson Warehouse Corp.
Morgan Transfer & Storage Co.
Morris Warehouse Co.
North Denver Transfer & Storage Co.
Rocky Mountain Warehouse Co.
Security Storage Co., Inc.
United States Transfer & Storage Warehouse Co.
Weicker Transfer & Storage Co.

GRAND JUNCTION
J. W. Milne Transfer & Storage
E. W. Terrill Transfer & Storage

COLORADO (Continued)

PUEBLO
Burch Warehouse & Transfer Co.
J. W. Pearson Company

TRINIDAD
Pople Transfer & Storage Co.

UTAH

OGDEN
Interstate Terminal Warehouse Co.
Western Gateway Storage Co.

SALT LAKE CITY
Central Warehouse
Hadley Transfer & Storage Co.
Jennings-Cornwall Warehouse Co.
M. A. Keyser Fireproof Storage Co.
Korns Warehouse Co.
Redman Van & Storage Co.
Security Storage & Commission Co.

WYOMING

CHEYENNE
Barlow Bros. Transfer
The Cheyenne Transfer & Storage Co.

REGION 9

IDAHO

BOISE
Compton Transfer and Storage Company
Idaho Distributors, Inc.
Pensley Transfer & Storage Co.

LEWISTON
Eagle Transfer & Storage Co.
Star Dray & Transfer Co.

POCATELLO
Garrett Transfer & Storage Co., Inc.
Jennings-Cornwall Warehouses, Inc.

TWIN FALLS
Garrett Transfer & Storage Co., Inc.

OREGON

EUGENE
Pacific Transfer & Storage Co.

OREGON (Continued)

PENDLETON
Penland Bros. Transfer Co.

PORTLAND
Alert Transfer & Storage Co.
Baggage & Omnibus Transfer Co.
Colonial Warehouse & Transfer Co.
Helser Bros. Transfer Co.
Holman Transfer Co.
Hunt Transfer Co., Inc.
Lyon Van & Storage Co.
Manning Warehouse & Transfer Co.
Northwestern Transfer Co.
Olsen Roe Transfer Co.
Oregon Transfer Company
Package Delivery Co.
Pihl Transfer & Storage Co.
Portland Auto Delivery Co.
Rapid Transfer & Storage Co.
Rudie Wilhelm Warehouse Co., Inc.

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OREGON (Continued)

ROSEBURG
H. S. French Transfer & Storage Co.

WASHINGTON

ABERDEEN
A. A. Star Transfer Co.

SEATTLE
A. B. C. Storage Co.
American Warehouse Co.
Christie-Lambert Van & Storage Co., Inc.
City Transfer & Storage Co.
Eyres Transfer & Warehouse Co.
Fortune Transfer Company
Hullin Transfer Co.
Merchants Transfer & Storage Co.
Olympic Warehouse & Cold Storage Co.
Owl Transfer & Storage Co.
Reliable Transfer & Storage Co.
Seattle Transfer & Storage Co.
System Transfer & Storage Co.

WASHINGTON (Continued)

SEATTLE (Continued)
Taylor-Edwards Whse. & Transfer Co., Inc.
United Warehouse Co.
Winn & Russell, Inc.

SPOKANE
Beardmore Transfer Line Corp.
Cater Transfer & Storage Co.
Goodwin Transfer & Storage Co.
Grimmer Storage & Truck Line, Inc.
McAllister Warehouse Co., Inc.
National Storage & Warehouse Co.
Pacific Transfer Co.
Riverside Warehouse
Spokane Transfer & Storage Co.

TACOMA
Pacific Storage Whse. & Distr. Co., Inc.
Star Commercial Moving & Storage Co.
Tacoma Moving & Storage Co.

WENATCHEE
Arrow Transfer & Storage Co.

REGION 10

ARIZONA

PHOENIX
Arrow Van & Storage Co.
Chambers Transfer & Storage Co.
Lightning Delivery Co.

TUCSON
Tucson Warehouse & Transfer Co.

CALIFORNIA

FRESNO
State Center Warehouse & Cold Storage Co., Inc.
Terminal Warehouse Co.

LONG BEACH
City Transfer & Storage Co.
Pacific & Orient Dock

LOS ANGELES
American Warehouse
Bekins Van Lines, Inc.
Birch-Smith Storage Co.
California Warehouse Co.
H. G. Chaffee Warehouse Co.
Citizens Warehouse
Colyear's Van & Storage Co.
Cook-McFarland Co.
Davies Warehouse Co.
G. Eckdahl & Son Warehouse Co.
Jennings-Nibley Warehouse Co., Ltd.
Los Angeles Warehouse Co.
Metropolitan Warehouse Co.
Modern Warehouses, Inc.
Overland Terminal Warehouse Co.
Pacific Coast Terminal Warehouse Co.
Pacific Commercial Warehouses, Inc.
Pacific Transportation & Warehouse Co.
Seaboard Warehouse
Star Truck & Warehouse Co.

CALIFORNIA (Continued)

OAKLAND
The Haslett Warehouse Co.
Howard Terminal
Oakland Warehouse Terminal, Div. of Merchants Exp. & Draying Co.

SACRAMENTO
Haslett Warehouse Co.

SAN DIEGO
Lyon Van & Storage Co.

SAN FRANCISCO
A. B. C. Transfer & Storage Co.
Belshaw Warehouse Co.
Central Warehouse & Drayage Co.
J. A. Clark Draying Co., Ltd.
De Pue Warehouse Co.
Distributors Warehouse Co.
The Dodd Warehouses
Farnsworth & Ruggles
Haslett Warehouse Co.
Lawrence Warehouse Co.
North Point Dock Warehouses
San Francisco Warehouse Co.
Sea Wall U. S. Bonded Warehouse
South End Warehouse Co.
Souther Warehouse Company
Thompson Bros.
Charles Lee Tilden & Co.
Turner-Whittell Warehouses
Walkup Drayage & Warehouse Co.

SAN JOSE
James Transfer & Storage Co.
Security Warehouse & Cold Storage Co.

SAN PEDRO
Outer Harbor Dock & Wharf Co.

STOCKTON
[illegible] Warehouse Co.

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Eyres Transfer & Warehouse Co.
Fortune Transfer Company
Hullin Transfer Co.
Merchants Transfer & Storage Co.
Olympic Warehouse & Cold Storage Co.
Owl Transfer & Storage Co.
Reliable Transfer & Storage Co.
Seattle Transfer & Storage Co.
System Transfer & Storage Co.

Spokane Transfer & Storage Co.

TACOMA
Pacific Storage Whse. & Distr. Co., Inc.
Star Commercial Moving & Storage Co.
Tacoma Moving & Storage Co.

WENATCHEE
Arrow Transfer & Storage Co.

REGION 10

ARIZONA

PHOENIX
Arrow Van & Storage Co.
Chambers Transfer & Storage Co.
Lightning Delivery Co.

TUCSON
Tucson Warehouse & Transfer Co.

CALIFORNIA

FRESNO
State Center Warehouse & Cold Storage Co., Inc.
Terminal Warehouse Co.

LONG BEACH
City Transfer & Storage Co.
Pacific & Orient Dock

LOS ANGELES
American Warehouse
Bekins Van Lines, Inc.
Birch-Smith Storage Co.
California Warehouse Co.
H. G. Chaffee Warehouse Co.
Citizens Warehouse
Colyear's Van & Storage Co.
Cook-McFarland Co.
Davies Warehouse Co.
G. Kekdahl & Son Warehouse Co.
Jennings-Nibley Warehouse Co., Ltd.
Los Angeles Warehouse Co.
Metropolitan Warehouse Co.
Modern Warehouses, Inc.
Overland Terminal Warehouse Co.
Pacific Coast Terminal Warehouse Co.
Pacific Commercial Warehouses, Inc.
Pacific Transportation & Warehouse Co.
Seaboard Warehouse
Star Truck & Warehouse Co.
Union Terminal Warehouse
Western Warehouse & Transfer Co.
Westland Warehouses, Inc.

LOS ANGELES HARBOR
City & Harbor Warehouse, Ltd.
Crescent Warehouse Co.
Wilmington Transfer & Storage Co.

CALIFORNIA (Continued)

OAKLAND
The Haslett Warehouse Co.
Howard Terminal
Oakland Warehouse Terminal, Div. of Merchants Exp. & Draying Co.

SACRAMENTO
Haslett Warehouse Co.

SAN DIEGO
Lyon Van & Storage Co.

SAN FRANCISCO
A. B. C. Transfer & Storage Co.
Belshaw Warehouse Co.
Central Warehouse & Drayage Co.
J. A. Clark Draying Co., Ltd.
De Pue Warehouse Co.
Distributors Warehouse Co.
The Dodd Warehouses
Farnsworth & Ruggles
Haslett Warehouse Co.
Lawrence Warehouse Co.
North Point Dock Warehouses
San Francisco Warehouse Co.
Sea Wall U. S. Bonded Warehouse
South End Warehouse Co.
Souther Warehouse Company
Thompson Bros.
Charles Lee Tilden & Co.
Turner-Whittell Warehouses
Walkup Drayage & Warehouse Co.

SAN JOSE
James Transfer & Storage Co.
Security Warehouse & Cold Storage Co.

SAN PEDRO
Outer Harbor Dock & Wharf Co.

STOCKTON
Haslett Warehouse Co.
Overland Transfer Co.

NEVADA

RENO
Nevada Transfer & Warehouse Co.

EXHIBIT C

NRA CODE

SUBSCRIBERS

TO

MERCHANDISE WAREHOUSING TRADE CODE

JANUARY 31, 1935

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REGION 1

CONNECTICUT

BRIDGEPORT
- Bridgeport Storage Warehouse Co.
- Edgerton & Sons, Incorporated
- Hartford Despatch & Warehouse Co.
- A. R. Pacelli & Sons
- The W. M. Terry Co., Inc.

DANBURY
- The Danbury Warehouse Co.

HARTFORD
- Bill Brothers Co.
- Boat Line Warehouse Co., Inc.
- Hartford Despatch & Warehouse Co.
- Hartford Flour Company, Inc.
- Whitaker & Bacon

MERIDEN
- H. T. Smith Express Co.

NEW HAVEN
- Carl Barone
- Davis Storage Co.
- Durham Storage Co.
- The Smedley Co.

NEW LONDON
- Connecticut Terminal Company, Inc.

NORWALK
- L. J. Reynolds & Son

TORRINGTON
- E. J. Kelley Co.

WATERBURY
- The Blakeslee Co.

MAINE

BANGOR
- McLaughlin Warehouse Co.

PORTLAND
- Atlantic Storage & Warehouse, Inc.
- Galt Block Warehouse Co.
- New England Cold Storage Co., Inc.
- The Twitchell Champlin Company

MASSACHUSETTS

BOSTON
- Atlas Terminal Stores, Inc.

MASSACHUSETTS (Continued)

BOSTON (Continued)
- Melcher Street Stores, Inc.
- Merchants Warehouse Co.
- Mills Transfer Company
- North Station Industrial Bldg., Inc.
- Oelrichs & Co.
- Piers Operating Company
- Service Warehouse Co.
- Standard Storage Company
- Wiggin Terminals, Inc.
- D. S. Woodberry Co.

SOUTH BOSTON
- Andrew Square Warehouse
- Fort Point Warehouse Co.

CAMBRIDGE
- Cambridge Terminal Warehouse Co.

EAST CAMBRIDGE
- Hoosac Storage & Warehouse Co.

FALL RIVER
- Belleville Warehouse Company
- Fall River Warehouse Co.
- Keogh Storage Co.
- Mackenzie & Winslow, Inc.
- Shellmound Warehouse Co.

HOLYOKE
- Holyoke Storage Co.
- Sheldon Transfer & Storage Co., Inc.

LAWRENCE
- Lawrence Storage Warehouse

LOWELL
- Atlantic States Whse. & Cold Stge. Corp.
- Lowell Public Warehouse Co., Inc.

LYNN
- Lynn Storage Warehouse Co.

NEW BEDFORD
- Belleville Warehouse Co.
- Central Warehouse
- Nauset Warehouse Co.
- New Bedford Public Warehouse Co.
- New Bedford Storage Whse. Co.
- Prospect Warehouse Co.
- Winslow-Mackenzie Co.

PEABODY

CONNECTICUT

BRIDGEPORT
- Bridgeport Storage Warehouse Co.
- Edgerton & Sons, Incorporated
- Hartford Despatch & Warehouse Co.
- A. R. Pacelli & Sons
- The W. M. Terry Co., Inc.

DANBURY
- The Danbury Warehouse Co.

HARTFORD
- Bill Brothers Co.
- Boat Line Warehouse Co., Inc.
- Hartford Despatch & Warehouse Co.
- Hartford Flour Company, Inc.
- Whitaker & Bacon

MERIDEN
- H. T. Smith Express Co.

NEW HAVEN
- Carl Barone
- Davis Storage Co.
- Durham Storage Co.
- The Smedley Co.

NEW LONDON
- Connecticut Terminal Company, Inc.

NORWALK
- L. J. Reynolds & Son

TORRINGTON
- E. J. Kelley Co.

WATERBURY
- The Blakeslee Co.

MAINE

BANGOR
- McLaughlin Warehouse Co.

PORTLAND
- Atlantic Storage & Warehouse, Inc.
- Galt Block Warehouse Co.
- New England Cold Storage Co., Inc.
- The Twitchell Champlin Company

MASSACHUSETTS

BOSTON
- Atlas Terminal Stores, Inc.
- Bankers Warehouse Co.
- Big Three, Inc.
- Boston Tidewater Terminal, Inc.
- Bowker Storage Company
- Central Warehouse Co.
- Central Wool Warehouse Corporation
- Congress Stores, Inc.
- Dexter Stores, Inc.
- Eldridge Baker Co. (Sleeper Storage Co.)
- Fargo Stores, Inc.
- Federal Warehouse, Inc.
- Fitz Warehouse & Distributing Co.
- General Warehouse & Distribution Company
- J. L. Kelso Co.
- Manufacturers' Warehouse Co.

MASSACHUSETTS (Continued)

BOSTON (Continued)
- Melcher Street Stores, Inc.
- Merchants Warehouse Co.
- Mills Transfer Company
- North Station Industrial Bldg., Inc.
- Oelrichs & Co.
- Piers Operating Company
- Service Warehouse Co.
- Standard Storage Company
- Wiggin Terminals, Inc.
- D. S. Woodberry Co.

SOUTH BOSTON
- Andrew Square Warehouse
- Fort Point Warehouse Co.

CAMBRIDGE
- Cambridge Terminal Warehouse Co.

EAST CAMBRIDGE
- Hoosac Storage & Warehouse Co.

FALL RIVER
- Belleville Warehouse Company
- Fall River Warehouse Co.
- Keogh Storage Co.
- Mackenzie & Winslow, Inc.
- Shellmound Warehouse Co.

HOLYOKE
- Holyoke Storage Co.
- Sheldon Transfer & Storage Co., Inc.

LAWRENCE
- Lawrence Storage Warehouse

LOWELL
- Atlantic States Whse. & Cold Stge. Corp.
- Lowell Public Warehouse Co., Inc.

LYNN
- Lynn Storage Warehouse Co.

NEW BEDFORD
- Belleville Warehouse Co.
- Central Warehouse
- Nauset Warehouse Co.
- New Bedford Public Warehouse Co.
- New Bedford Storage Whse. Co.
- Prospect Warehouse Co.
- Winslow-Mackenzie Co.

PEABODY
- Munroe & Arnold Merritt Express, Inc.

SOMERVILLE
- The Vacuum Co.

SPRINGFIELD
- Atlantic States Whse. & Cold Stge. Corp.
- Connecticut Valley Storage Whse. Co.
- Hartford Despatch & Warehouse Co.
- A. J. Lane Co.
- Litch Trucking Co.
- Sturtevant-Calderwood Co.

WORCESTER
- Colonial Warehouse & Distributing Co.
- Worcester Cold Storage & Warehouse Company

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NEW HAMPSHIRE

LACONIA
F. S. Willey & Co., Inc.

MANCHESTER
McLane & Taylor

RHODE ISLAND

PAWTUCKET
Darlington Warehouse Co.

DELAWARE

DOVER
Delmarva Warehouses, Inc.

DISTRICT OF COLUMBIA

WASHINGTON
Fidelity Storage Company
The Jacobs Transfer Co., Inc.
Metropolitan Warehouse Company
Terminal Refrigerating & Warehousing Corporation
The Terminal Storage Co. of Washington

MARYLAND

BALTIMORE
Baltimore Fidelity Warehouse Co.
Belt's Wharf Warehouses, Inc.
Camden Warehouses
Canton Co. of Baltimore
Central Warehouse Co., Inc.
McCormick Warehouse Co., Inc.
Merchants Terminal Corp.
Ruckert Terminal Corp.
The Terminal Warehouse Co. of Baltimore City

CUMBERLAND
Baltimore Fidelity Warehouse Co.

SALISBURY
Dennis Storage & Moving Co.

NEW JERSEY

ATLANTIC CITY
National Storage Warehouse Co.

BAYWAY
Bayway Terminal

CARLTON HILL
Metropolitan Warehouse Co., Inc.

ELIZABETH
Weimar Storage Co., Inc.

HOBOKEN
Campbell Stores
Hoboken Dock Co.
United States Testing Co., Inc.

RHODE ISLAND (Continued)

PROVIDENCE
The Cole Teaming Warehouse Co.
Fox Point Warehouses, Inc.
Merchants Cold Storage & Whse. Co.
Peoples Storage Warehouse Company
Providence Storage Company
Terminal Warehouse Co. of R. I., Inc.

WESTERLY
Rogers Company

REGION 2

NEW JERSEY (Continued)

PATERSON
Hayden's Transfer
Paterson Storage Co.

PORT NEWARK
Seaboard Storage Corp'n.

RUTHERFORD
George B. Holman & Company, Inc.

TRENTON
A. V. Mannings Sons

NEW YORK

ALBANY
Albany Term. & Sec. Warehouse Co., Inc.
Central Railway Terminal & Cold Storage Co., Inc.
Roberts Terminal Warehouse Co.

BINGHAMTON
E. W. Conklin & Son
C. C. Yager & Co., Inc.

BROOKLYN
Berkshire Transfer Corp'n.
Bisco Warehouse Corp.
Bowne-Morton's Stores, Inc.
Brooklyn Terminal Stores, Inc.
Brooklyn Waterfront Terminal Corp.
Butlers Warehouses, Inc.
Gerhard & Hartman, Inc.
Glasgow Storage Warehouse Company, Inc.
Gray Fleet Trucking Company, Inc.
Greenpoint Terminal Corp.
Michael Guthertz
Jay Street Terminal
Kings County Refrigerating Company
Long Island Storage Warehouses, Inc.
Luckman Brothers
McNally Brothers, Incorporated
Marino Brothers
Ed. J. Mooney
N. & W. Flour Trucking Company, Inc.
Pendola Flour Trucking Company
Pennsylvania Distillery, Inc.
Raffetto Brothers, Inc.
The Ridge Mills
Seaboard Storage Company
South Eleventh Street Whse. Corp.
Tooker Storage & Forwarding Co.
Wallabout Basin Storage & Term. Co., Inc.

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DELAWARE

DOVER
Delmarva Warehouses, Inc.

DISTRICT OF COLUMBIA

WASHINGTON
Fidelity Storage Company
The Jacobs Transfer Co., Inc.
Metropolitan Warehouse Company
Terminal Refrigerating & Warehousing Corporation
The Terminal Storage Co. of Washington

MARYLAND

BALTIMORE
Baltimore Fidelity Warehouse Co.
Bell's Wharf Warehouses, Inc.
Camden Warehouses
Canton Co. of Baltimore
Central Warehouse Co., Inc.
McCormick Warehouse Co., Inc.
Merchants Terminal Corp.
Ruckert Terminal Corp.
The Terminal Warehouse Co. of Baltimore City

CUMBERLAND
Baltimore Fidelity Warehouse Co.

SALISBURY
Dennis Storage & Moving Co.

NEW JERSEY

ATLANTIC CITY
National Storage Warehouse Co.

BAYWAY
Bayway Terminal

CARLTON HILL
Metropolitan Warehouse Co., Inc.

ELIZABETH
Weimar Storage Co., Inc.

HOBOKEN
Campbell Stores
Hoboken Dock Co.
United States Testing Co., Inc.

JERSEY CITY
Distillers Warehouse Corporation
Eastern Terminal Company.
Harborside Warehouse Co.
Jersey City Storage, Inc.
Lackawanna Terminal Warehouses, Inc.
Long Dock Co.
Union Terminal Cold Storage Co., Inc.

LONG BRANCH
James Calkins & Company

NEWARK
Job De Camp, Inc.
Essex Warehouse Co.
Lehigh Warehouse & Trans. Co.
Mercur Corp.
Newark Central Warehouse Co.
Waverly Stge. & Whse. Co., Inc.

NEW JERSEY (Continued)

PATERSON
Hayden's Transfer
Paterson Storage Co.

PORT NEWARK
Seaboard Storage Corp'n.

RUTHERFORD
George B. Holman & Company, Inc.

TRENTON
A. V. Mannings Sons

NEW YORK

ALBANY
Albany Term. & Sec. Warehouse Co., Inc.
Central Railway Terminal & Cold Storage Co., Inc.
Roberts Terminal Warehouse Co.

BINGHAMTON
E. W. Conklin & Son
C. C. Yager & Co., Inc.

BROOKLYN
Berkshire Transfer Corp'n.
Bisco Warehouse Corp.
Bowne-Morton's Stores, Inc.
Brooklyn Terminal Stores, Inc.
Brooklyn Waterfront Terminal Corp.
Butlers Warehouses, Inc.
Gerhard & Hartman, Inc.
Glasgow Storage Warehouse Company, Inc.
Gray Fleet Trucking Company, Inc.
Greenpoint Terminal Corp.
Michael Gutherts
Jay Street Terminal
Kings County Refrigerating Company
Long Island Storage Warehouses, Inc.
Luckman Brothers
McNally Brothers, Incorporated
Marino Brothers
Ed. J. Mooney
N. & W. Flour Trucking Company, Inc.
Pendola Flour Trucking Company
Pennsylvania Distillery, Inc.
Raffetto Brothers, Inc.
The Ridge Mills
Seaboard Storage Company
South Eleventh Street Whse. Corp.
Tooker Storage & Forwarding Co.
Wallabout Basin Storage & Term. Co., Inc.
The S. M. Wheeler Warehouse Co.

BUFFALO
Buffalo Freight Terminal Warehouse Co.
O. J. Glenn & Son, Inc.
Keystone Warehouse Co.
Knowlton Warehouse Co.
Larkin Co., Inc.
The Market Terminal Warehouse
Monarch Storage & W[redacted] Co.
M. Moran Transportation Lines, Inc.
Seneca Terminal & Storage Corp.
Terminals & Transportation Corp. of Amer.

ELMIRA
Joseph Bimberg Sons
A. C. Rice Storage Corp.

FAIRPORT
Fairport Storage & Ice Corp.

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NEW YORK (Continued)

ITHACA
Dean of Ithaca, Inc.

JAMESTOWN
Chautauqua Storage & Transfer Co.
Jamestown Warehouse

LONG ISLAND CITY
Manhattan Movers, Incorporated
Royal Warehouse Corp'n.

NEW YORK
Acker & Co., Inc.
Altobell Trucking Company
American Dock Co.
Arbuckle Brothers
Baker & Williams
Baltimore & Ohio Stores, Inc.
Beards' Erie Basin, Inc.
Wm. R. Boyce & Son, Inc.
W. D. Bresler, Incorporated
Bronx Refrigerating Co.
Brookhattan Terminal Warehouse Corp.
Burkam Brothers, Incorporated
Bush Terminal Co.
Columbia Storage Warehouses
Henry J. Comens, Inc.
Commercial Stores, Inc.
Conboy Trucking Corporation
Continental Milling & Whse. Co., Inc.
Continental Warehouse Corp.
Theodore Crowell, Inc.
Daniels & Kennody, Inc.
Dominion Warehouses, Incorporated
Downtown Storage Whse. Co., Inc.
Joseph Doyle, Inc.
Empire Forwarding Co.
A. O. Feidelson, Incorporated
Fidelity Warehouse Co.
Florsme Corporation
Flour Terminals, Incorporated
Fur Merchants Cold Storage Co., Inc.
General Warehouse Corporation
Gough & Semke, Inc.
Greenwich Street Stores
Adam Groll
C. C. Hamilton & Co., Inc.
Harris Warehouse, Inc.
James J. Harrison
Heermance Storage & Refrigerating Co.
Holland Warehouse Corp'n.
Independent Warehouses, Inc.
Insular Terminal Corporation
Jane Street Warehouse
Kierstead Warehouse & Forwarding Co., Inc.
Kingsbridge Auto Storage & Whse. Co., Inc.
L. & F. Stores
Lee Brothers, Inc.
Lehigh Harlem River Terminal Whse., Inc.
Lincoln Tidewater Terminals, Inc.
F. C. Linde Co.
The Long Dock Co.
Lynch Warehouses, Inc.
Manhattan Refrigerating Company
The Manhattan Storage & Warehouse Co.
T. I. McCormack Trucking Co., Inc.
The Jay A. Mellish Warehouses, Inc.
Merchants Refrigerating Co.
Midtown Warehouse, Inc.
Mott Haven Storage Warehouse Company, Inc.

NEW YORK (Continued)

NEW YORK (Continued)
Sclafani & Peckio, Incorporated
Seaboard Storage Corporation
Robert Shaw's U. S. Bonded Warehouses
Shephard Warehouse, Inc.
Silver Flour Warehouse & Trucking Corp'n.
State Warehouse Co., Inc.
Steamship Terminal Operating Corp'n.
Henry I. Stetler, Inc.
Sunset Warehouses, Inc.
Terminal Warehouse Co.
Towers Warehouses, Inc.
United Flour Trucking Company
Unity Warehouse Co.
Vestry Warehouses, Inc.
Warwick-Thomson Co.
Washington Market Warehouse
White's Warehouse, Incorporated

OSWEGO
Oswego Netherland Company, Incorporated
Wallace Storage Warehouse

ROCHESTER
B. R. & P. Warehouse, Inc.
Blanchard Storage Co., Inc.
C. & D. Warehouse Corp
Geo. M. Clancy Carting Co., Inc.
Clancy Carting & Storage Co., Inc.
B. G. Costich & Sons, Inc.
Exchange Warehouse Co., Inc.
Monroe Warehouse Company, Inc.
Rochester Storage Warehouses
Service Storage Co.
Upton Cold Storage Co., Inc.

SCHENECTADY
Schenectady Storage & Trucking Co.

STAPLETON
The Richmond Terminal Trucking Co., Inc.

SYRACUSE
Flagg Storage Warehouse Co.
Great Northern Warehouses
King Storage Warehouse Co., Inc.
Shefford Warehouse

UTICA
Broad Street Warehouse Corp
Jones-Clark Trucking & Storage Co., Inc.
Murray Warehouse Co., Inc.
Utica Warehouse Co., Inc.

WATERTOWN
Marcy-Buck & Wimslow, Inc.

YORKVILLE
Utica Warehouse Co., Inc.

PENNSYLVANIA

BETHLEHEM
Lehigh & New England Terminal Whse. Co.

ERIE
Erie Storage & Carting Co.
Fort Erie Warehouse & Docks

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Wm. R. Boyce & Son, Inc.
W. D. Bresler, Incorporated
Bronx Refrigerating Co.
Brookhattan Terminal Warehouse Corp.
Burkam Brothers, Incorporated
Bush Terminal Co.
Columbia Storage Warehouses
Henry J. Comens, Inc.
Commercial Stores, Inc.
Conboy Trucking Corporation
Continental Milling & Whse. Co., Inc.
Continental Warehouse Corp.
Theodore Crowell, Inc.
Daniels & Kennedy, Inc.
Dominion Warehouses, Incorporated
Downtown Storage Whse. Co., Inc.
Joseph Doyle, Inc.
Empire Forwarding Co.
A. O. Feidelson, Incorporated
Fidelity Warehouse Co.
Florame Corporation
Flour Terminals, Incorporated
Fur Merchants Cold Storage Co., Inc.
General Warehouse Corporation
Gough & Semke, Inc.
Greenwich Street Stores
Adam Groll
C. C. Hamilton & Co., Inc.
Harris Warehouse, Inc.
James J. Harrison
Heermance Storage & Refrigerating Co.
Holland Warehouse Corp'n.
Independent Warehouses, Inc.
Insular Terminal Corporation
Jane Street Warehouse
Kierstead Warehouse & Forwarding Co., Inc.
Kingsbridge Auto Storage & Whse. Co., Inc.
L. & F. Stores
Lee Brothers, Inc.
Lehigh Harlem River Terminal Whse., Inc.
Lincoln Tidewater Terminals, Inc.
F. C. Linde Co.
The Long Dock Co.
Lynch Warehouses, Inc.
Manhattan Refrigerating Company
The Manhattan Storage & Warehouse Co.
T. I. McCormack Trucking Co., Inc.
The Jay A. Mellish Warehouses, Inc.
Merchants Refrigerating Co.
Midtown Warehouse, Inc.
Mott Haven Storage Warehouse Company, Inc.
Murray & Jones
The National Cold Storage Co., Inc.
The National Storage Co.
New York Dock Co.
New York Piers, Incorporated
William H. Norman, Inc.
North & Dalzell, Incorporated
North River Stores, Inc.
Old Slip Warehouse, Inc.
Pennsylvania Storage Warehouse, Inc.
Piers, Inc.
Port Warehouses, Inc.
Postmann Flour Trucking Company, Inc.
Pouch Terminal, Inc.
Railroad Stores, Inc.
Republic Storage Co., Inc.
Rex Warehouses, Inc.
Rockefeller Center, Incorporated
C. Rudolph Warehouse Company, Inc.
Ruhe Storage & Trucking Co., Inc.
H. W. St. John & Co.

OSWEGO
Oswego Netherland Company, Incorporated
Wallace Storage Warehouse

ROCHESTER
B. R. & P. Warehouse, Inc.
Blanchard Storage Co., Inc.
C. & D. Warehouse Corp.
Geo. M. Clancy Carting Co., Inc.
Clancy Carting & Storage Co., Inc.
B. G. Costich & Sons, Inc.
Exchange Warehouse Co., Inc.
Monroe Warehouse Company, Inc.
Rochester Storage Warehouses
Service Storage Co.
Upton Cold Storage Co., Inc.

SCHENECTADY
Schenectady Storage & Trucking Co.

STAPLETON
The Richmond Terminal Trucking Co., Inc.

SYRACUSE
Flagg Storage Warehouse Co.
Great Northern Warehouses
King Storage Warehouse Co., Inc.
Shefford Warehouse

UTICA
Broad Street Warehouse Corp.
Jones-Clark Trucking & Storage Co., Inc.
Murray Warehouse Co., Inc.
Utica Warehouse Co., Inc.

WATERTOWN
Marcy-Buck & Winslow, Inc.

YORKVILLE
Utica Warehouse Co., Inc.

PENNSYLVANIA

BETHLEHEM
Lehigh & New England Terminal Whse. Co.

ERIE
Erie Storage & Carting Co.
Fort Erie Warehouse & Docks

HARRISBURG
Harrisburg Storage Company
Keystone Warehouse Company
Montgomery & Co.

HAZELTON
Karn's Transfer & Storage Co.

JOHNSTOWN
Johnstown Terminal Storage Company

LANCASTER
Lancaster Storage Company

PHILADELPHIA
Bailey Warehouses
Bredt's Warehouse
Commercial Warehousing Co.
Fenton Storage Co.
Gallagher's Warehouses
Hugh F. Gannon

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PENNSYLVANIA (Continued)

PHILADELPHIA (Continued)
General Warehouse Co.
Godley's Storage Warehouses
Guaranty Corporation
Kinney Distilling Company
Merchants Warehouse Co.
Northeastern Warehouse Co.
Pennsylvania Warehousing & Safe Deposit Co.
Philadelphia & Norfolk Steamship Company
Philadelphia Piers, Incorporated
Philadelphia Warehousing & Cold Stge. Co.
Rex & Co., Inc.
Terminal Commerce Building, Inc.
Terminal Warehouse Co.
Traders Warehouse

PITTSBURGH
W. J. Beitler Warehouse
Buley-Patterson-Potts Co.
Consolidated Storage Company
Duquesne Warehouse Co.
Iron City Elevator Co., Inc.
Kirby Transfer & Storage Co.

PENNSYLVANIA (Continued)

PITTSBURGH (Continued)
Pittsburgh Terminal Warehouse & Transfer Co.
South Side Transfer & Storage Co.
Superior Transfer & Storage Co.
Try Street Terminal Co.
Union Storage Co.
United Storage & Trucking Co.
White Terminal Co.

READING
Columbian Warehouse Co.
Wertz Warehouse Co.

SCRANTON
Merchants Storage Warehouse Company
Quackenbush Warehouse Co.

WILKES-BARRE
Matheson Warehouse Co.
Merchants Warehousing Co.
Wilkes-Barre Warehousing Co.

WILLIAMSPORT
Williamsport Storage Co., Inc.

REGION 3

ALABAMA

ANNISTON
Nixon Transfer & Coal Co.

BIRMINGHAM
Alabama Warehousing Co.
Flemming Transfer & Warehouse Co., Inc.
Harris Transfer & Warehouse Co.
Shaw Warehouse Co.
Strickland Transfer & Storage Co.
Wittichen Transfer & Warehouse Co.
H. C. Wright

MOBILE
Abbs Transfer Service
Alabama Warehousing Co.
Finch Warehousing Company
Gulf City Transfer Company, Incorporated
Merchants Transfer Co.
United Warehouse Co., Inc.

MONTGOMERY
Alabama Motor Transfer & Warehouse Co.
Moeller Transfer & Storage Co.
S. G. Weil Company

FLORIDA

JACKSONVILLE
Central Warehouse & Distributing Co.
Laney & Delcher Storage Co.
Peninsular Warehouse Co.
Service Warehouse Co., Inc.
Union Terminal Warehouse Co.
Vann Warehouse Co.
Wiesenfeld Warehouse Co.

MIAMI
American Brokerage & Commission Company
Apte Brothers
The J. F. Chaille Co. Warehouses

FLORIDA (Continued)

TAMPA
W. L. Blocks
Caldwell Bonded Warehouse Company
Lee Terminal & Warehouse Corp.
Tampa Stevedoring Co.
Tampa Union Terminal Co.
The Warehouse Inc.

WEST PALM BEACH
Brandon Transfer & Storage Co.

GEORGIA

ATLANTA
Atlanta Service Warehouse
Bonded Service Warehouse
J. A. Campbell, Inc.
Capitol City Warehouse Co.
Food Sales Co., Inc.
Fulton Warehouse Co.
General Warehouse & Storage Co., Inc.
Loeb-Apte Company
M. & M. Warehouse Co., Inc.
Martin & Zeagler, Inc.
Massey & Fair Inc.
Monroe Bonded Warehouses
C. B. Ponder Company
Pyburn Co.
Raley Brothers, Inc.
Security Warehouse Co.
Southeastern Bonded Warehouses
Terminal Warehouse Co.

AUGUSTA
City Bonded Warehouse Co.
Farmers & Merchants Bonded Warehouse

MACON

Traders Warehouse

PITTSBURGH
W. J. Beitler Warehouse
Buley, Patterson-Potts Co.
Consolidated Storage Company
Duquesne Warehouse Co.
Iron City Elevator Co., Inc.
Kirby Transfer & Storage Co.
Merchants Storage Warehouse Company
Quackenbush Warehouse Co.

WILKES-BARRE
Matheson Warehouse Co.
Merchants Warehousing Co.
Wilkes-Barre Warehousing Co.

WILLIAMSPORT
Williamsport Storage Co., Inc.

REGION 3

ALABAMA

ANNISTON
Nixon Transfer & Coal Co.

BIRMINGHAM
Alabama Warehousing Co.
Flemming Transfer & Warehouse Co., Inc.
Harris Transfer & Warehouse Co.
Shaw Warehouse Co.
Strickland Transfer & Storage Co.
Wittichen Transfer & Warehouse Co.
H. C. Wright

MOBILE
Abbs Transfer Service
Alabama Warehousing Co.
Finch Warehousing Company
Gulf City Transfer Company, Incorporated
Merchants Transfer Co.
United Warehouse Co., Inc.

MONTGOMERY
Alabama Motor Transfer & Warehouse Co.
Moeller Transfer & Storage Co.
S. G. Weil Company

FLORIDA

JACKSONVILLE
Central Warehouse & Distributing Co.
Laney & Delcher Storage Co.
Peninsular Warehouse Co.
Service Warehouse Co., Inc.
Union Terminal Warehouse Co.
Vann Warehouse Co.
Wiesenfeld Warehouse Co.

MIAMI
American Brokerage & Commission Company
Apte Brothers
The J. F. Chaille Co. Warehouses
Fireproof Storage Warehouses, Inc.
Flash Express & Storage Co., Inc.
General Warehouse & Storage Company
Hoskins & Green Company, Inc.
L. A. Jones, Inc.
Robbin's Warehouse & Distributing Co.
The Warehouse & Transfer Company, Incorporated
John E. Withers Transfer & Stge. Co., Inc.

ORLANDO
Fidelity Storage & Warehouse Co.

PENSACOLA
Ferriss Warehouse & Storage Co.
Ray Hardware & Truck Co. operating the Bonded Whse. Co.

FLORIDA (Continued)

TAMPA
W. L. Blocks
Caldwell Bonded Warehouse Company
Lee Terminal & Warehouse Corp.
Tampa Stevedoring Co.
Tampa Union Terminal Co.
The Warehouse Inc.

WEST PALM BEACH
Brandon Transfer & Storage Co.

GEORGIA

ATLANTA
Atlanta Service Warehouse
Bonded Service Warehouse
J. A. Campbell, Inc.
Capitol City Warehouse Co.
Food Sales Co., Inc.
Fulton Warehouse Co.
General Warehouse & Storage Co., Inc.
Loeb-Apte Company
M. & M. Warehouse Co., Inc.
Martin & Zeagler, Inc.
Massey & Fair Inc.
Monroe Bonded Warehouses
C. B. Ponder Company
Pyburn Co.
Raley Brothers, Inc.
Security Warehouse Co.
Southeastern Bonded Warehouses
Terminal Warehouse Co.

AUGUSTA
City Bonded Warehouse Co.
Farmers & Merchants Bonded Warehouse

MACON
Washburn Bonded Warehouse, Inc.

SAVANNAH
Savannah Bonded Whse. & Tfr. Co.
South Atlantic Storage Co.

KENTUCKY

CORBIN
A. J. Seibert Co., Inc.

LEXINGTON
Superior Service Warehouse Company
Union Transfer & Storage Co.
Vine St. Stge. & Whse. Co.

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KENTUCKY (Continued)

LOUISVILLE
Denby Motor Transfer Co., Inc.
Falls City Warehouse Co., Inc.
Huber & Huber Motor Express Terminal
Industrial Storage Co., Inc.
Kentucky Term. Whse. & Storage Co.
Lauppin Warehouse Co.
Louisville Public Warehouse Co.
Ninth Street Public Warehouse
Ohio River & Terminal Warehouse Company
A. J. Seibert Co., Inc. Props.
Louisville Sugar House
Southern Seed Company
Tabb Storage Whse. & Frt. Trans. Line

MISSISSIPPI

JACKSON
Ricks Storage Co.

MERIDIAN
Smith Transfer & Storage Co.

VICKSBURG
Z. B. Schwarz & Co.

NORTH CAROLINA

ASHEVILLE
Consolidated Warehouse Co.

CHARLOTTE
American Storage & Warehouse Co.
Robert F. Beatty
Britt-Shiver-Norcom, Inc.
A. J. Campbell Co.
Carolina Transfer & Storage Co.
Charlotte Distributing Co.
W. J. Edwards & Co.
Frederickson Motor Express Corporation
Kilgo Transfer Co., Inc.
Avery R. Rhyne
Standard Bonded Warehouses
Union Storage & Warehouse Co.

GREENSBORO
Champion Storage & Trucking Company
J. T. Dailey Company
South Atlantic Bonded Warehouse Corp.

HICKORY
Abernathy Transfer Company

HIGH POINT
Carolina Bonded Warehouse Co.
High Point Bonded Warehouse Co.

RALEIGH
Carolina Storage & Distributing Co.
Raleigh Bonded Warehouse, Inc.

WINSTON-SALEM
Lentz Transfer Storage Company

SOUTH CAROLINA

CHARLESTON
Charleston Warehouse & Forwarding Co.
George E. Martin

SOUTH CAROLINA (Continued)

SPARTANBURG
Britt Campany
Fowler & Edwards
J. L. Gentry
Piedmont Coastal Motor Express Corp.
Spartanburg Bonded Warehouses, Inc.

TENNESSEE

CHATTANOOGA
Arrow Transfer & Storage Co.
Chattanooga Transfer & Storage Co.
Crabtree Transfer & Storage Co., Inc.

EAST CHATTANOOGA
Textile Storage & Warehouse Co.

KNOXVILLE
Fireproof Storage & Van Co.
Rowe Transfer & Storage Company

MEMPHIS
Commercial Storage & Warehouse Co.
Dunbar Transfer & Storage Co., Inc.
General Whse. & Distributing Co.
Industrial Supplies Warehouse
Memphis Bonded Warehouse Co.
Merchants Warehouse Co.
P. & B. Transfer & Stge. Co., Inc.
Patterson Transfer Co.
John H. Poston Stge. Warehouses, Inc.
Rose Warehouse Co.
Tennessee Terminal Warehouses, Inc.
United Warehouse & Terminal Co.
P. H. Vernon Warehouse Co.

NASHVILLE
Bond, Chadwell Co.
Central Van & Storage Co.
Sam G. Douglass & Company
Kirkpatrick Brokerage Company
Nashville Warehouse & Elevator Corp.
The Price-Bass Co.
Henry W. Sawrie Co.
R. H. White Transfer & Storage Co.

PARIS
Union Transfer Co.

VIRGINIA

BRISTOL
Bristol Grocery Company, Incorporated

DANVILLE
Davis Storage & Warehouse Company

LYNCHBURG
Lynchburg Storage Co.

NEWPORT NEWS
Hiden Storage & Forwarding Co.

NORFOLK
The Bell Storage Co., Inc.
Fidelity Storage Company
D. D. Jones Transfer & Whse. Co.
Jones Cold Storage Corp.
Norfolk Tidewater Terminals
H. B. Rogers, Inc.
Security Storage & Safe Deposit Co., Inc.

MISSISSIPPI

JACKSON
Ricks Storage Co.

MERIDIAN
Smith Transfer & Storage Co.

VICKSBURG
Z. B. Schwarz & Co.

NORTH CAROLINA

ASHEVILLE
Consolidated Warehouse Co.

CHARLOTTE
American Storage & Warehouse Co.
Robert F. Beatty
Britt-Shiver-Norcom, Inc.
A. J. Campbell Co.
Carolina Transfer & Storage Co.
Charlotte Distributing Co.
W. J. Edwards & Co.
Frederickson Motor Express Corporation
Kilgo Transfer Co., Inc.
Avery R. Rhyne
Standard Bonded Warehouses
Union Storage & Warehouse Co.

GREENSBORO
Champion Storage & Trucking Company
J. T. Dailey Company
South Atlantic Bonded Warehouse Corp.

HICKORY
Abernathy Transfer Company

HIGH POINT
Carolina Bonded Warehouse Co.
High Point Bonded Warehouse Co.

RALEIGH
Carolina Storage & Distributing Co.
Raleigh Bonded Warehouse, Inc.

WINSTON-SALEM
Lents Transfer & Storage Company

SOUTH CAROLINA

CHARLESTON
Charleston Warehouse & Forwarding Co.
George F. Martin
Piedmont Coastal Motor Express Corp.

COLUMBIA
American Brokerage & Storage Company
Auld & White
Boineau's, Inc.
Carolina Bonded Storage Co.
Moffatt B. DuPre Company
Piedmont Coastal Motor Exp. Corp.

FLORENCE
W. H. Sydnor

GREENVILLE
Britt-McKinney Company
F. H. Edwards Co.
Piedmont Coastal Motor Express Corp.
Textile Warehouse Co.

EAST CHATTANOOGA
Textile Storage & Warehouse Co.

KNOXVILLE
Fireproof Storage & Van Co.
Rowe Transfer & Storage Company

MEMPHIS
Commercial Storage & Warehouse Co.
Dunbar Transfer & Storage Co., Inc.
General Whse. & Distributing Co.
Industrial Supplies Warehouse
Memphis Bonded Warehouse Co.
Merchants Warehouse Co.
P. & B. Transfer & Stge. Co., Inc.
Patterson Transfer Co.
John H. Poston Stge. Warehouses, Inc.
Rose Warehouse Co.
Tennessee Terminal Warehouses, Inc.
United Warehouse & Terminal Co.
P. H. Vernon Warehouse Co.

NASHVILLE
Bond, Chadwell Co.
Central Van & Storage Co.
Sam G. Douglass & Company
Kirkpatrick Brokerage Company
Nashville Warehouse & Elevator Corp.
The Price-Bass Co.
Henry W. Sawrie Co.
R. H. White Transfer & Storage Co.

PARIS
Union Transfer Co.

VIRGINIA

BRISTOL
Bristol Grocery Company, Incorporated

DANVILLE
Davis Storage & Warehouse Company

LYNCHBURG
Lynchburg Storage Co.

NEWPORT NEWS
Hideh Storage & Forwarding Co.

NORFOLK
The Bell Storage Co., Inc.
Fidelity Storage Company
D. D. Jones Transfer & Whse. Co.
Jones Cold Storage Corp.
Norfolk Tidewater Terminals
H. B. Rogers, Inc.
Security Storage & Safe Deposit Co., Inc.
Southgate Storage Co.
Virginia-Carolina Storage Company
West Storage Co.

NORTON
Norton Feed Company, Inc.

PETERSBURG
Petersburg Bonded Warehouse Corp.

RICHMOND
W. S. Forbes & Company
Terminal Storage Corp.
Virginia Bonded Whse. Corp.

ROANOKE
Finance & Storage Company
Mundy Brothers Transfer Corporation
Pitzer Transfer Corp.
Roanoke Public Warehouse

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WEST VIRGINIA

BLUEFIELD
City Warehouse Co.
Flat Top Warehouse Company
General Storage Co.

CHARLESTON
Elk Storage Warehouse Co.
Nelson Transfer & Storage Co.

CLARKSBURG
Central Storage Co.

WEST VIRGINIA (Continued)

HUNTINGTON
Duling Brothers
Maier Sales & Storage Co.
J. P. Woods & Company

PARKERSBURG
Citizens Transfer & Storage Company

WHEELING
J. E. Miller Transfer & Storage Company
Union Warehouse Holding Co.
Edward Wagner Fireproof Storage Co.
Wheeling Warehouse & Storage Company

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ILLINOIS

AURORA
Martin Transfer & Storage Co., Inc.
Valentine Transfer & Storage Co.

BELLEVILLE
W. L. Batdorf & Co.

BLOOMINGTON
The Johnson Transfer & Fuel Co.
V. B. Robinson & Company

CAIRO
Cairo River & Rail Warehouses
Cairo Warehouse & Forwarding Company
Glynn's Transfer & Fireproof Storage
Halliday Warehouse Co.
Pink & Co., Inc.

CANTON
Canton Distributing Company

CHAMPAIGN
Champaign Stge. & Whse. Co.
McArty Storage Co.

CHICAGO
Anchor Storage Co.
C & A Terminal Co.
Central Cold Storage Company
Central Storage & Forwarding Co.
Chapman & Smith Company
Continental Warehouse Company
Crooks Terminal Warehouses
Currier-Lee Warehouse Co.
Dietrich Warehousing Co.
Douglas-Guardian Warehouse Corporation
Dunning & Hill Transfer & Storage Company
Empire Warehouses, Inc.
Fogel Warehouse Company
Goold Storage Co.
Griswold-Walker-Bateman Co.
Herrmann Warehouse Co.
Illinois Warehouse Co.
Jefferson Parke Warehouse
Kel-Mer Warehouse Company
E. E. Kendall Company
Edward Lashin Co.
Loop River & Rail Terminal Warehouse
Merchandise Warehouses, Incorporated
Midland Warehouse & Transfer Co.
Mitchell-Jackson, Inc.
Nelson Warehouse & Express Company (Not Inc.)
The Newberry Transfer Company
North Central Terminals Co.
North Pier Terminals Co.
Ontario Warehouse Co.
Orleans-Ontario Warehouse
Producers Warehouse Co.
Railway Terminal & Warehouse Co.
Republic Warehouse Company

ILLINOIS (Continued)

CHICAGO (Continued)
Tooker Storage & Forwarding Co.
Twin City Trading Co.
Wakem & McLaughlin, Inc.
Western Warehousing Company

DANVILLE
Danville Transfer & Storage Co.
W. E. Glavey Warehouse Company

DECATUR
Decatur Warehouse Co.
Hamman Brothers Transfer & Storage Company

DIXON
Dixon Fruit Company

DuQUOIN
Owens Transfer

EAST ST. LOUIS
McMahon Transfer Co.
Mississippi Avenue Warehouses
Monsanto Bonded Storage Company

ELGIN
Elgin Storage & Transfer Company

FREEPORT
Freeport Fruit & Produce Company

GALESBURG
The Corn Belt Warehouse

JACKSONVILLE
Jacksonville Transfer & Stge. Co., Inc.

JOLIET
Joliet Warehouse & Transfer Co.

KANKAKEE
Belt Route Warehouse & Stge. Co.

KEWANEE
Mayhew & Wedge

LA SALLE
H. J. Tobler

MOLINE
Crandall Whse. & Transfer Co.

MOUNDS
Cairo Warehouse & Forwarding Company

OTTAWA

REIGON 4

ILLINOIS

AURORA
- Martin Transfer & Storage Co., Inc.
- Valentine Transfer & Storage Co.

BELLEVILLE
- W. L. Batdorf & Co.

BLOOMINGTON
- The Johnson Transfer & Fuel Co.
- V. B. Robinson & Company

CAIRO
- Cairo River & Rail Warehouses
- Cairo Warehouse & Forwarding Company
- Glynn's Transfer & Fireproof Storage
- Halliday Warehouse Co.
- Pink & Co., Inc.

CANTON
- Canton Distributing Company

CHAMPAIGN
- Champaign Stge. & Whse. Co.
- McArty Storage Co.

CHICAGO
- Anchor Storage Co.
- C & A Terminal Co.
- Central Cold Storage Company
- Central Storage & Forwarding Co.
- Chapman & Smith Company
- Continental Warehouse Company
- Crooks Terminal Warehouses
- Currier-Lee Warehouse Co.
- Dietrich Warehousing Co.
- Douglas-Guardian Warehouse Corporation
- Dunning & Hill Transfer & Storage Company
- Empire Warehouses, Inc.
- Fogel Warehouse Company
- Goold Storage Co.
- Griswold-Walker-Bateman Co.
- Herrmann Warehouse Co.
- Illinois Warehouse Co.
- Jefferson Parke Warehouse
- Kel-Mer Warehouse Company
- E. E. Kendall Company
- Edward Lashin Co.
- Loop River & Rail Terminal Warehouse
- Merchandise Warehouses, Incorporated
- Midland Warehouse & Transfer Co.
- Mitchell-Jackson, Inc.
- Nelson Warehouse & Express Company (Not Inc.)
- The Newberry Transfer Company
- North Central Terminals Co.
- North Pier Terminals Co.
- Ontario Warehouse Co.
- Orleans-Ontario Warehouse
- Producers Warehouse Co.
- Railway Terminal & Warehouse Co.
- Republic Warehouse Company
- Seng Terminal Warehouse Co.
- Seng Waterway Warehouse
- Slater's Fireproof Storage Company
- Soo Terminal Warehouse
- South End Warehouse Co.
- Sykes Terminal Warehouse
- Thomson Terminal Warehouses, Inc.

ILLINOIS (Continued)

CHICAGO (Continued)
- Tooker Storage & Forwarding Co.
- Twin City Trading Co.
- Wakem & McLaughlin, Inc.
- Western Warehousing Company

DANVILLE
- Danville Transfer & Storage Co.
- W. E. Glavey Warehouse Company

DECATUR
- Decatur Warehouse Co.
- Hamman Brothers Transfer & Storage Company

DIXON
- Dixon Fruit Company

DuQUOIN
- Owens Transfer

EAST ST. LOUIS
- McMahon Transfer Co.
- Mississippi Avenue Warehouses
- Monsanto Bonded Storage Company

ELGIN
- Elgin Storage & Transfer Company

FREEPORT
- Freeport Fruit & Produce Company

GALESBURG
- The Corn Belt Warehouse

JACKSONVILLE
- Jacksonville Transfer & Stge. Co., Inc.

JOLIET
- Joliet Warehouse & Transfer Co.

KANKAKEE
- Belt Route Warehouse & Stge. Co.

KEWANEE
- Mayhew & Wedge

LA SALLE
- H. J. Tobler

MOLINE
- Crandall Whse. & Transfer Co.

MOUNDS
- Cairo Warehouse & Forwarding Company

OTTAWA
- Scherer Bros. Transfer & Stge., Inc.

PANA
- Roley Bros. Transfer Co.

PEKIN
- Kriegsman Transfer Co.

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PEORIA
Federal Warehouse Co.
Merchants Warehouse Company
National Warehouse Company, Inc.
O'Neill Brothers Transfer & Storage Company

PRINCETON
Larson Seed House

QUINCY
King Transfer Line

ROCKFORD
Bartlett Storage Warehouse Co.
Lawson Transfer & Storage Co.
Richards Storage & Van Company

ROCK ISLAND
Rock Island Transfer & Storage Co.
Voss Bros. Express & Storage Co.

SPRINGFIELD
Wm. H. Edwards
Hillier Storage Co.
Merchants Transfer & Storage Co.
Weidlocher & Sons, Inc.

STERLING
John Clayton Batteiger

STREATOR
Johnson Transfer & Storage Co.

TAYLORVILLE
H. R. Rinker

WAUKEGAN
Waukegan Terminal Whse. Co.

INDIANA

ANDERSON
W. A. Clark Transfer Company, Incorporated

EVANSVILLE
Broker Warehouse Co., Inc.
Evansville Warehouse Co.
Lex Terminal Warehouse Co.
Mead Johnson Terminal Corp.
The Terminal Warehouse Co., Inc.

FORT WAYNE
Fort Wayne Storage Co.
Mitchell Sales & Storage Company, Inc.
Pettit's Storage Warehouse Co.

GARY
Gary Warehouse Co.

HAMMOND
Chapin & Co.
Great Lakes Warehouse Corp.

HUNTINGTON
Bartlett Transfer & Stge. Company

INDIANAPOLIS
Advance Transfer & Storage Company
Bessire & Company, Inc.
Central Public Warehouse Co.
Central Transfer & Storage Co., Inc.
Central Union Truck Terminal, Inc.
Henry Coburn Storage & Whse. Co.
D. & D. Transfer & Storage Company

INDIANA (Continued)

LOGANSPORT
L. B. K. & I. Transit
Spencer Transfer & Storage Company
W. S. Twells Storage Company
Earl Winegardner Company

MUNCIE
Delaware Trucking Co., Inc.

NEW ALBANY
Denny Motor Transport Co.
Scott Public Warehouse Company

SOUTH BEND
Grand Trunk Terminal Warehouse Co.
Hodges & MacIntosh
National Storage Warehouse Co.
Ullery Storage Warehouse Co.

TERRE HAUTE
Bauermeister Terminal Company
Grube-Smith Company
Morge Delivery Company, Incorporated
Terre Haute Warehouse & Storage Company

VINCENNES
Vincennes Transfer & Storage Company

MICHIGAN

BATTLE CREEK
Battle Creek Storage Company
Emerson Truck & Storage Company

BAY CITY
Riverside Truck & Storage Co.
P. Van Haaren & Sons Storage Co., Inc.

CADILLAC
Cadillac Storage & Transfer Company

DETROIT
Aqua Terminal & Dock Corporation
Central Detroit Warehouse Co.
Detroit Harbor Terminals, Inc.
Detroit Refrigerating Co.
Edgar's Sugar House, Inc.
Federal Warehouse Co.
Grand Trunk Ry. Terminal & Cold Stge. Co.
The John Henry & Schram Storage & Trucking Co.
Jefferson Terminal Warehouse
Manufacturers Warehouse Company
Riverside Storage & Carting Company
Superior Warehouse Co.
Union Trucking Company
United States Warehouse Co.
Wayne Warehouse Company
G. B. Weaver & Co., Inc.

FLINT
Central Warehouse Co.

GRAND RAPIDS
Columbian Storage & Transfer Co.
Furniture Manufacturers Warehouse Company
Kent Storage Co.
Merchants Storage & Transfer Co.
Richards Storage Corporation
Service Storage Company
Star Transfer Line
Western Michigan Transfer & Storage Company

Lawson Transfer & Storage Co.
Richards Storage & Van Company

ROCK ISLAND
Rock Island Transfer & Storage Co.
Voss Bros. Express & Storage Co.

SPRINGFIELD
Wm. H. Edwards
Hillier Storage Co.
Merchants Transfer & Storage Co.
Weidlocher & Sons, Inc.

STERLING
John Clayton Batteiger

STREATOR
Johnson Transfer & Storage Co.

TAYLORVILLE
H. R. Rinker

WAUKEGAN
Waukegan Terminal Whse. Co.

INDIANA

ANDERSON
W. A. Clark Transfer Company, Incorporated

EVANSVILLE
Broker Warehouse Co., Inc.
Evansville Warehouse Co.
Lex Terminal Warehouse Co.
Mead Johnson Terminal Corp.
The Terminal Warehouse Co., Inc.

FORT WAYNE
Fort Wayne Storage Co.
Mitchell Sales & Storage Company, Inc.
Pettit's Storage Warehouse Co.

GARY
Gary Warehouse Co.

HAMMOND
Chapin & Co.
Great Lakes Warehouse Corp.

HUNTINGTON
Bartlett Transfer & Stge. Company

INDIANAPOLIS
Advance Transfer & Storage Company
Bessire & Company, Inc.
Central Public Warehouse Co.
Central Transfer & Storage Co., Inc.
Central Union Truck Terminal, Inc.
Henry Coburn Storage & Whse. Co.
D. & D. Transfer & Storage Company
Indiana Naval Stores Company
Indiana Terminal & Refrigerating Co.
Indianapolis Warehouse & Storage Company
Koschnick & Company
The Lauter Warehouse Co.
Mann Transfer & Storage Co., Inc.
Strohm Warehouse & Cartage Co.
Tripp Warehouse Co.

JEFFERSONVILLE
Jeffersonville Public Warehouse, Incorporated

LAFAYETTE
Joe Ardapple Storage & Transfer Company
Hodges & MacIntosh
National Storage Warehouse Co.
Ullery Storage Warehouse Co.

TERRE HAUTE
Bauermeister Terminal Company
Grube-Smith Company
Morge Delivery Company, Incorporated
Terre Haute Warehouse & Storage Company

VINCENNES
Vincennes Transfer & Storage Company

MICHIGAN

BATTLE CREEK
Battle Creek Storage Company
Emerson Truck & Storage Company

BAY CITY
Riverside Truck & Storage Co.
P. Van Haaren & Sons Storage Co., Inc.

CADILLAC
Cadillac Storage & Transfer Company

DETROIT
Aqua Terminal & Dock Corporation
Central Detroit Warehouse Co.
Detroit Harbor Terminals, Inc.
Detroit Refrigerating Co.
Edgar's Sugar House, Inc.
Federal Warehouse Co.
Grand Trunk Ry. Terminal & Cold Stge. Co.
The John Henry & Schram Storage & Trucking Co.
Jefferson Terminal Warehouse
Manufacturers Warehouse Company
Riverside Storage & Carting Company
Superior Warehouse Co.
Union Trucking Company
United States Warehouse Co.
Wayne Warehouse Company
G. B. Weaver & Co., Inc.

FLINT
Central Warehouse Co.

GRAND RAPIDS
Columbian Storage & Transfer Co.
Furniture Manufacturers Warehouse Company
Kent Storage Co.
Merchants Storage & Transfer Co.
Richards Storage Corporation
Service Storage Company
Star Transfer Line
Western Michigan Transfer & Storage Company

HANCOCK
Rowe's Terminal Warehouse

IRON MOUNTAIN
W. D. Cochran Warehouse

IRONWOOD
F. H. Kearney Company

JACKSON
Union Truck & Storage Company

KALAMAZOO
National Storage Company

LANSING
Farm Bureau Services, Incorporated
Fireproof Storage Co.

MARQUETTE
Flanigan Brothers Storage Company

MUSKEGON
Richards Storage Corp.

PONTIAC
Pontiac Industrial Buildings, Incorporated

PORT HURON
United Trucking Service, Inc.

SAGINAW
Central Warehouse Company

SOUTH HAVEN
South Haven Term. Co., Inc.

OHIO

AKRON
The American Storage & Transfer Company
Belleville Warehouse Company
The Cotter City View Storage Company
Knickerbocker Warehouse & Storage Company
Star Warehouse Company, Incorporated

ASHTABULA
Ashtabula Fireproof Storage Co., Inc.

CANTON
Canton Storage, Inc.
Cummins Storage Co.
McKinley Storage & Transfer Co.
W. H. Schneider Storage Co.

CINCINNATI
Baltimore & Ohio Warehouse Co.
The Cincinnati Ice Mfg. & Cold Stge. Co.
Cincinnati Merchandise Warehouses, Inc.
Cincinnati Storage & Whse. Co., Inc.
Cincinnati Terminal Warehouses, Inc.
The Cincinnati Transfer Co.
Front & Butler Warehouses, Inc.
Gruner & Beckwith Company
Meinch Drayage Co.
The Wallace Transfer & Forwarding Co.

CLEVELAND
Bramley Storage Company
Britten Terminal, Incorporated
Central Storage Warehouse Co.
The Cleveland Storage Co.
Consolidated Cartage & Storage Co.
The Curtis Bros. Transfer Co.
The Distr. Term. & Cold Storage Co.
The East 45th St. Warehouse Co.
William Edwards Co.
Greeley-General Warehouse Co.
The Gregg Cartage & Storage Company
Lederer Terminal Warehouse Co.
Liberty Cartage Company
The Lincoln Storage Company
National Terminals Corp.
Pyramid Storage & Moving Company
Railway Warehouses, Inc.
Security Warehouse & Cartage, Inc.
Shaw Warehouse Company
The Sheriff St. Mkt. & Storage Co.
Warehouse & Dist. Service, Incorporated

DAYTON
Thomas F. Larkin Warehouse & Cartage Company
The Peerless Storage Company
Union Storage Co.

HAMILTON
Cincinnati Storage & Warehouse Co.

LIMA
Evans Coal Company
Lima Truck & Storage Co.
Stelzer Truck & Storage Company

MANSFIELD
The Pioneer Storage Company

MARION
Wright Transfer & Storage Company

MIDDLETOWN
Cincinnati Storage & Warehouse Co.

SPRINGFIELD
Wagner Warehouse Corporation

STEUBENVILLE
Jefferson Storage Warehouse Co.

TOLEDO
Brundage Bros. Co.
The Sam Davis Co.
Great Lakes Terminal Whse. Co. of Toledo
Harbor Terminals, Inc.
Merchants & Manufacturers Warehouse Co.
Moreton Storage Co.
National Terminals Corp.
The Rathburn Cartage Company
Toledo Terminal Warehouse Co.

YOUNGSTOWN
Fisher-Gilder Cartage & Storage Co.
G. A. Webster Electric Company
Youngstown-Erie Terminal Co.

ZANESVILLE
Wilson & Hamilton Storage & Transfer Company

WISCONSIN

APPLETON
Harry H. Long Moving & Storage

EAU CLAIRE
Eau Claire Warehouse Co.
Sioux Storage & Forwarding Co.

FOND DU LAC
Anchor Transfer & Storage Company

GREEN BAY
Brown County Warehouses, Inc.
Hillside Garage & Transit Company, Inc.
Leicht Transfer & Storage Co.
Jules Peters Transfer & Storage Co.

JANESVILLE
The Geo. H. Hammes Trf. & Stge. Co.
Ward Brothers

KENOSHA
David Nelson & Son Fireproof Storage

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PORT HURON
United Trucking Service, Inc.

SAGINAW
Central Warehouse Company

SOUTH HAVEN
South Haven Term. Co., Inc.

OHIO

AKRON
The American Storage & Transfer Company
Belleville Warehouse Company
The Cotter City View Storage Company
Knickerbocker Warehouse & Storage Company
Star Warehouse Company, Incorporated

ASHTABULA
Ashtabula Fireproof Storage Co., Inc.

CANTON
Canton Storage, Inc.
Cummins Storage Co.
McKinley Storage & Transfer Co.
W. H. Schneider Storage Co.

CINCINNATI
Baltimore & Ohio Warehouse Co.
The Cincinnati Ice Mfg. & Cold Stge. Co.
Cincinnati Merchandise Warehouses, Inc.
Cincinnati Storage & Whse. Co., Inc.
Cincinnati Terminal Warehouses, Inc.
The Cincinnati Transfer Co.
Front & Butler Warehouses, Inc.
Gruner & Beckwith Company
Meinch Drayage Co.
The Wallace Transfer & Forwarding Co.

CLEVELAND
Bramley Storage Company
Britten Terminal, Incorporated
Central Storage Warehouse Co.
The Cleveland Storage Co.
Consolidated Cartage & Storage Co.
The Curtis Bros. Transfer Co.
The Distr. Term. & Cold Storage Co.
The East 45th St. Warehouse Co.
William Edwards Co.
Greeley-General Warehouse Co.
The Gregg Cartage & Storage Company
Lederer Terminal Warehouse Co.
Liberty Cartage Company
The Lincoln Storage Company
National Terminals Corp.
Pyramid Storage & Moving Company
Railway Warehouses, Inc.
Security Warehouse & Cartage, Inc.
Shaw Warehouse Company
The Sheriff St. Mkt. & Storage Co.
Warehouse & Dist. Service, Incorporated

COLUMBUS
Bazler Transfer & Storage Company, Inc.
Capitol Warehouse Company
Columbus Terminal Warehouse Co.
Columbus Warehouses, Inc.
Great Western Storage Company
The Kutschbach-McNally Co.
The Merchandise Warehouse Co.
The Neilston Warehouse Co.

COCHOCTON
The F. Beutenmiller & Son Company

[illegible]
Stelzer Truck & Storage Company

MANSFIELD
The Pioneer Storage Company

MARION
Wright Transfer & Storage Company

MIDDLETOWN
Cincinnati Storage & Warehouse Co.

SPRINGFIELD
Wagner Warehouse Corporation

STEUBENVILLE
Jefferson Storage Warehouse Co.

TOLEDO
Brundage Bros. Co.
The Sam Davis Co.
Great Lakes Terminal Whse. Co. of Toledo
Harbor Terminals, Inc.
Merchants & Manufacturers Warehouse Co.
Moreton Storage Co.
National Terminals Corp.
The Rathburn Cartage Company
Toledo Terminal Warehouse Co.

YOUNGSTOWN
Fisher-Gilder Cartage & Storage Co.
G. A. Webster Electric Company
Youngstown-Erie Terminal Co.

ZANESVILLE
Wilson & Hamilton Storage & Transfer Company

WISCONSIN

APPLETON
Harry H. Long Moving & Storage

EAU CLAIRE
Eau Claire Warehouse Co.
Sioux Storage & Forwarding Co.

FOND DU LAC
Anchor Transfer & Storage Company

GREEN BAY
Brown County Warehouses, Inc.
Hillside Garage & Transit Company, Inc.
Leicht Transfer & Storage Co.
Jules Peters Transfer & Storage Co.

JANESVILLE
The Geo. H. Hammes Trf. & Stge. Co
Ward Brothers

KENOSHA
David Nelson & Son Fireproof Storage

LA CROSSE
Gateway City Trans. & Stge. Co.
La Crosse Terminal Warehouse Co.
LaCrosse Transfer Line

MADISON
Hillside Garage & Transit Company
Madison Fireproof Warehouse
The Union Transfer & Storage Company

MANITOWOC
Manitowoc Refrigerating Company
S. W. Randolph Storage & Warehouse

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WISCONSIN (Continued)

MILWAUKEE
Atlas Storage Co.
Badger Storage Warehouse Co.
Barclay Warehouse Co.
Barry Transfer & Storage Co., Inc.
Boulevard Fireproof Warehouses, Incorporated
Carlson Storage Co.
Courteen Seed Co.
Stephen H. Du Puy
Hansen Storage Co.
Hiliside Garage & Transit Company
Kellogg Seed Company
Otto L. Kuehn Company
Lincoln Fireproof Warehouse Co.
Milwaukee Fireproof Storage Company
Milwaukee Transfer & Storage Co.
Murphy Warehouse Company
National Terminals Corp.
National Warehouse Corp.
W. J. Nugent Contracting & Storage

WISCONSIN (Continued)

MILWAUKEE (Continued)
Roegge Storage & Delivery Co.
Terminal Warehouse, Incorporated
L. Teweles Seed Co.
United Fireproof Storage Company

OSHKOSH
Oshkosh Storage Co.
Riverside Storage Company

RACINE
Racine Storage & Transfer Company
Ross Moving & Storage Co.

SHEBOYGAN
Sheboygan Furniture & Forwarding Co.

WAUSAU
Hillside Garage & Transit Company
Wausau Service Company, Incorporated

REGION 5

SUPERIOR, WISCONSIN

SUPERIOR
Hill Warehouse & Trucking Co.
Superior and Duluth Transfer Co.

MINNESOTA

DULUTH
Bridgeman-Russell Company
Duluth Van & Storage Co.
McDougall Terminal & Cold Storage Co.
Northern Cold Storage & Warehouse Co.
Security Storage & Van Co.

MANKATO
Jessup Storage & Moving Co.

MINNEAPOLIS
Anchor Warehouse, Inc.
Cameron Transfer & Storage Co.
Colonial Warehouses, Inc.
Great Northern Warehouse Co., Inc.
Kedney Warehouse Co.
La Belle Safety Storage Company
Merchants Cold Storage Co.
Minneapolis Terminal Warehouse Co.
Minneapolis Transfer & Warehouse Company
Northwest Warehousing Co.
Northwestern Terminal Co.
Security Warehouse Co.
Skellet Company
Sterling Cartage Company
Twin City Trading Co.
Widholm Transfer & Storage Co.

MOORHEAD
Moorhead Storage & Transfer Co.

ROCHESTER
Carey's Transfer & Storage Company

ST. PAUL
Central Warehouse Co.
Fidelity Storage & Transfer Co.
Kedney Warehouse Co.
St. Paul Terminal Warehouse Co.

WINONA

MONTANA (Continued)

BUTTE
Bertoglio & McTaggart Stge. Co.
Christie Transfer & Storage Co.
Jones Storage & Transfer Co., Inc.

GREAT FALLS
Great Falls Transfer & Storage Co.

HAVRE
United Transfer & Storage Company

HELENA
Diamond "C" Transfer

MISSOULA
Blair Transfer & Storage Company
Reely's Storage & Transfer

NORTH DAKOTA

BISMARCK
Wachter Transfer Corp.

FARGO
Adams Transfer & Storage
Union Storage & Transfer Co.

GRAND FORKS
Kedney Warehouse Co. of North Dakota

JAMESTOWN
Jamestown Warehouse Co.

SOUTH DAKOTA

ABERDEEN
Jobbers Warehouse, Ward-Owsley Co.
Security Warehouse Company

HURON
Central Warehouse Company

RAPID CITY
North Western Warehouse Co.

Otto L. Kuehn Company
Lincoln Fireproof Warehouse Co.
Milwaukee Fireproof Storage Company
Milwaukee Transfer & Storage Co.
Murphy Warehouse Company
National Terminals Corp.
National Warehouse Corp.
W. J. Nugent Contracting & Storage
Ross Moving & Storage Co.

SHEBOYGAN
Sheboygan Furniture & Forwarding Co.

WAUSAU
Hillside Garage & Transit Company
Wausau Service Company, Incorporated

REGION 8

SUPERIOR, WISCONSIN

SUPERIOR
Hill Warehouse & Trucking Co.
Superior and Duluth Transfer Co.

MINNESOTA

DULUTH
Bridgeman-Russell Company
Duluth Van & Storage Co.
McDougall Terminal & Cold Storage Co.
Northern Cold Storage & Warehouse Co.
Security Storage & Van Co.

MANKATO
Jessup Storage & Moving Co.

MINNEAPOLIS
Anchor Warehouse, Inc.
Cameron Transfer & Storage Co.
Colonial Warehouses, Inc.
Great Northern Warehouse Co., Inc.
Kedney Warehouse Co.
La Belle Safety Storage Company
Merchants Cold Storage Co.
Minneapolis Terminal Warehouse Co.
Minneapolis Transfer & Warehouse Company
Northwest Warehousing Co.
Northwestern Terminal Co.
Security Warehouse Co.
Skellet Company
Sterling Cartage Company
Twin City Trading Co.
Widholm Transfer & Storage Co.

MOORHEAD
Moorhead Storage & Transfer Co.

ROCHESTER
Carey's Transfer & Storage Company

ST. PAUL
Central Warehouse Co.
Fidelity Storage & Transfer Co.
Kedney Warehouse Co.
St. Paul Terminal Warehouse Co.

WINONA
Hodgins Transfer & Storage Co.

MONTANA

BILLINGS
Baker Transfer & Storage Co., Inc.
Billings Warehouse & Trading Co.

MONTANA (Continued)

BUTTE
Bertoglio & McTaggart Stge. Co.
Christie Transfer & Storage Co.
Jones Storage & Transfer Co., Inc.

GREAT FALLS
Great Falls Transfer & Storage Co.

HAVRE
United Transfer & Storage Company

HELENA
Diamond "C" Transfer

MISSOULA
Blair Transfer & Storage Company
Reely's Storage & Transfer

NORTH DAKOTA

BISMARCK
Wachter Transfer Corp.

FARGO
Adams Transfer & Storage
Union Storage & Transfer Co.

GRAND FORKS
Kedney Warehouse Co. of North Dakota

JAMESTOWN
Jamestown Warehouse Co.

SOUTH DAKOTA

ABERDEEN
Jobbers Warehouse, Ward-Owaley Co.
Security Warehouse Company

HURON
Central Warehouse Company

RAPID CITY
North Western Warehouse Co.

SIOUX FALLS
Sioux Distributing Company
Strahon Transfer & Storage Company
Wilson Storage & Transfer Company

WATERTOWN
Dakota Warehouse Co.

REGION 6

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IOWA

AMES
Dragoun Transfer & Storage Co.

ATLANTIC
Atlantic Motor Freight

BOONE
Wilson's Transfer & Storage

CEDAR RAPIDS
American Transfer & Storage Co.
Calder's Van & Storage Co., Inc.
Cedar Rapids Transfer & Storage Company
P. J. Ernst Auto Storage
Lynch Transfer Co., Inc.
Ben H. Witwer

CLINTON
Carstensen Transfer & Storage Co.

COUNCIL BLUFFS
Ford Bros. Van & Storage Co.
Interstate Transfer & Storage Company

DAVENPORT
Ewert & Richter Exp. & Stge. Co.
Masons Garage
Merchants Transfer & Storage Co.
Roederer Transfer & Storage Co.

DES MOINES
Blue Island Storage Co.
Hawkeye Transfer Co., Inc.
Merchants Transfer & Storage Co.
Ware Transfer & Storage Co.
White Line Transfer & Storage Co.

DUBUQUE
The Martin-Strelau Co.

FORT DODGE
Brady Transfer & Storage Co.
Sherman Storage & Transfer Line
White Transfer & Storage Co

IOWA CITY
Iowa City Warehouse Company

MARSHALLTOWN
National Transfer & Storage Company

MASON CITY
Cadwell Transfer & Storage Co.
Mason City Warehouse Corporation
Veech Transfer & Storage Company

SHELDON
McKay & Krahling

SIOUX CITY
Bekins Merchandise Storage
Dougherty Storage & Van Co.
Sioux City Storage & Forwarding Co.

KANSAS

ARKANSAS CITY
Ark Warehouse Company

KANSAS (Continued)

PARSONS
Parsons Cold Storage Co.

PITTSBURG
Merchants Transfer & Warehouse Co.
Pittsburg Transfer & Storage Co.

PRATT
Riley's Truck Line

SALINA
Stevenson Transfer Co.

TOPEKA
Kansas Transfer & Storage Co.
Topeka Transfer & Storage Co.

WICHITA
Broker's Office & Warehouse Co.
The Cassell Transfer & Storage Co.
Central Warehouse & Storage Company
Le Kron & Woodring Transfer & Storage Company
Merchants Transfer & Whse. Co., Inc.
Mid-Continent Warehouse Company
Peoples Transfer & Storage Co.
Southwest Transfer & Storage Company
United Warehouse Co.
Wichita Yellow Cab Co., Inc.

MISSOURI

CARTHAGE
Carthage Transfer & Storage Co.

COLUMBIA
The '23' Transfer & Storage Company

HANNIBAL
Caverly Transfer Line
Hannibal Flour Feed & Seed Company

JOPLIN
The Inter-State Grocer Company
Joplin Transfer & Storage Co.
Marlatt Transfer & Storage Company
Tonnies Transfer & Storage Co.

KANSAS CITY
A-B-C Fireproof Warehouse Co.
Abner Hood Chemical Company
Adams Transfer & Storage Co.
Central Storage Co.
Crooks Terminal Warehouses
Empire Storage & Ice Co.
Evans Transfer & Stge. Co.
Kansas City Power & Light Co.
J. T. Kennedy Sales Company
Liberty Storage Co.
W. E. Murray Transfer & Storage Co.
The Mutual Transfer Co.
The Only Way Transfer & Warehouse Co.
Radial Warehouse Co.
Rairdon Transfer & Warehouse Co.
The Rhodes Implement Co.
H. H. Smith Storage Co.
United Warehouse Co.
[illegible] & Distributing Co[illegible]

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Cedar Rapids Transfer & Storage Company
P. J. Ernst Auto Storage
Lynch Transfer Co., Inc.
Ben H. Witwer

CLINTON
Carstensen Transfer & Storage Co.

COUNCIL BLUFFS
Ford Bros. Van & Storage Co.
Interstate Transfer & Storage Company

DAVENPORT
Ewert & Richter Exp. & Stge. Co.
Masons Garage
Merchants Transfer & Storage Co.
Roederer Transfer & Storage Co.

DES MOINES
Blue Island Storage Co.
Hawkeye Transfer Co., Inc.
Merchants Transfer & Storage Co.
Ware Transfer & Storage Co.
White Line Transfer & Storage Co.

DUBUQUE
The Martin-Strelau Co.

FORT DODGE
Brady Transfer & Storage Co.
Sherman Storage & Transfer Line
White Transfer & Storage Co.

IOWA CITY
Iowa City Warehouse Company

MARSHALLTOWN
National Transfer & Storage Company

MASON CITY
Cadwell Transfer & Storage Co.
Mason City Warehouse Corporation
Veech Transfer & Storage Company

SHELDON
McKay & Krahling

SIOUX CITY
Bekins Merchandise Storage
Dougherty Storage & Van Co.
Sioux City Storage & Forwarding Co.

KANSAS

ARKANSAS CITY
Ark Warehouse Company

COFFEYVILLE
Hastings Transfer Company

DODGE CITY
Dodge City Transfer & Storage Company
The Dodge City Warehouse Company
Woolwine's Transfer & Storage Co.

EMPORIA
L. R. Bailey Transfer & Storage Co.

HUTCHINSON
Cody Transfer & Storage Company

KANSAS CITY
Grandview Club Transfer & Storage Co.
Inter-state Transfer & Storage Company
The North American Provision Company

TOPEKA
Kansas Transfer & Storage Co.
Topeka Transfer & Storage Co.

WICHITA
Broker's Office & Warehouse Co.
The Cassell Transfer & Storage Co.
Central Warehouse & Storage Company
Le Kron & Woodring Transfer & Storage Company
Merchants Transfer & Whse. Co., Inc.
Mid-Continent Warehouse Company
Peoples Transfer & Storage Co.
Southwest Transfer & Storage Company
United Warehouse Co.
Wichita Yellow Cab Co., Inc.

MISSOURI

CARTHAGE
Carthage Transfer & Storage Co.

COLUMBIA
The '23' Transfer & Storage Company

HANNIBAL
Caverly Transfer Line
Hannibal Flour Feed & Seed Company

JOPLIN
The Inter-State Grocer Company
Joplin Transfer & Storage Co.
Marlatt Transfer & Storage Company
Tonnies Transfer & Storage Co.

KANSAS CITY
A-B-C Fireproof Warehouse Co.
Abbet Hood Chemical Company
Adams Transfer & Storage Co.
Central Storage Co.
Crooks Terminal Warehouses
Empire Storage & Ice Co.
Evans Transfer & Stge. Co.
Kansas City Power & Light Co.
J. T. Kennedy Sales Company
Liberty Storage Co.
W. E. Murray Transfer & Storage Co.
The Mutual Transfer Co.
The Only Way Transfer & Warehouse Co.
Radial Warehouse Co.
Rairdon Transfer & Warehouse Co.
The Rhodes Implement Co.
H. H. Smith Storage Co.
United Warehouse Co.
Walnut Storage & Distributing Company

ST. JOSEPH
Brown Transfer & Storage Co.
St. Joseph Transfer & Stge. Co.
Terminal Warehouses of St. Joseph, Inc.

ST. LOUIS
Arrow Storage Co., Inc.
Booth Cold Storage Co.
Broadway Terminal Warehouse Corp.
Central Terminal Co.
Columbia Terminals Co.
Grocer's Warehouse Company
Howlan Warehouse Company
S. N. Long Warehouse
Madison Street Terminal Warehouse Corp'n.
McPheeter's Warehouse Co.

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MISSOURI (Continued)

ST. LOUIS (Continued)
Missouri Warehousing Co.
Mound City Ice & Cold Storage Company
Rutger St. Warehouse, Inc.
St. Louis Distributing Whse. Co.
St. Louis Mart, Inc.
St. Louis Terminal Warehouse Co.
Talbot Terminal Warehouse Co.
Tyler Warehouse Co.
Weber Drayage & Warehouse Company

SEDALIA
Shafer Storage Company

SPRINGFIELD
Finkbiner Transfer & Storage Co.
Springfield Warehouse & Transfer Co.
Whitehead Transfer & Storage Company

NEBRASKA

ALLIANCE
E. H. Boyd
City Transfer & Storage Company

BEATRICE
A. Palmer Company

BRIDGEPORT
Bottling & Storage Company

COLUMBUS
Columbus Fuel & Storage Company

FREMONT
Union Transfer Co.

NEBRASKA (Continued)

GRAND ISLAND
Sullivan's Grand Island Storage Company

HASTINGS
Borley Storage & Transfer Co., Inc.

LINCOLN
Star Van & Storage Co.
Sullivan Transfer & Storage Co.
Union Terminal Warehouse Co.

McCOOK
A. C. Wright

NORTH PLATTE
Brown Fruit Company
Cohagen Transfer & Storage Company

OMAHA
Bekins Van & Storage Co.
Buehman Warehouse & Storage Co.
Central Storage & Van Co.
Fidelity Storage & Van Co., Inc.
Ford Bros. Van & Storage Co.
Gordon Storage Warehouses, Inc.
Jerpe Cold Storage Company
Knowles Storage & Moving Co.
T. A. McDonald
Pacific Storage & Warehouse Co.
The Terminal Warehouse Co.
Trimble Brothers

SCOTTS BLUFF
Buplinger Storage & Transfer Co.

REGION 7

ARKANSAS

EL DORADO
Black Transfer & Storage Company

FORT SMITH
Arkansas Warehouse Co.
O. K. Transfer & Storage Co.

LITTLE ROCK
Commercial Warehouse Co.
Merchants Transfer & Warehouse Co.
Terminal Warehouse Co.

TEXARKANA
Hunter Transfer & Storage Co.

LOUISIANA

ALEXANDRIA
Carnahan's Transfer & Storage Co.
Trousdale, Wright & Keller, Inc.

BATON ROUGE
S. A. Harris Transfer & Stge. Co., Inc.
Port of Baton Rouge, Municipal Docks, Term. & Whse.

LAKE CHARLES
United Whse. & Forwarding Co., Inc.

MONROE
W. M. Black & Company
Faulk-Collier Bonded Warehouses, Inc.
Monroe Transfer & Storage

LOUISIANA (Continued)

NEW ORLEANS (Continued)
Douglas Public Service Corp.
Douglas Shipside Storage Corp.
Gough-Brokerage Company, Inc.
Importers Bonded Warehouse Company
Independent Warehouse Co., Inc.
Kentucky Coffee Warehouse Co.
Maloney Trucking & Storage, Inc.
New Orleans Compress Company, Inc.
Orleans Warehouses Corp., Inc.
Pelican Storage & Transfer Company
Rebecca-Fabacher, Inc.
Riverside Warehouses, Inc.
Shipside Storage Co., Inc.
Standard Warehouse Co., Inc.

SHREVEPORT
Caddo Transfer & Warehouse Co., Inc.
Herrin Transfer & Warehouse Co., Inc.
McGee Warehouse & Storage Co.
O. K. Storage & Van Co., Inc.
Terminal Warehouse & Trf. Co., Inc.

NEW MEXICO

ALBUQUERQUE
Shufflebarger Transfer & Storage Co., Inc.
Springer Transfer Co., Inc.

OKLAHOMA

Shaler Storage Company

SPRINGFIELD
Finkbiner Transfer & Storage Co.
Springfield Warehouse & Transfer Co.
Whitehead Transfer & Storage Company

NEBRASKA

ALLIANCE
E. H. Boyd
City Transfer & Storage Company

BEATRICE
A. Palmer Company

BRIDGEPORT
The Bottling & Storage Company

COLUMBUS
Columbus Fuel & Storage Company

FREMONT
Union Transfer Co.

NORTH PLATTE
Brown Fruit Company
Cohagen Transfer & Storage Company

OMAHA
Bekins Van & Storage Co.
Bushman Warehouse & Storage Co.
Central Storage & Van Co.
Fidelity Storage & Van Co., Inc.
Ford Bros. Van & Storage Co.
Gordon Storage Warehouses, Inc.
Jerpe Cold Storage Company
Knowles Storage & Moving Co.
T. A. McDonald
Pacific Storage & Warehouse Co.
The Terminal Warehouse Co.
Trimble Brothers

SCOTT'S BLUFF
Ruplinger Storage & Transfer Co.

REGION 7

ARKANSAS

EL DORADO
Black Transfer & Storage Company

FORT SMITH
Arkansas Warehouse Co.
O. K. Transfer & Storage Co.

LITTLE ROCK
Commercial Warehouse Co.
Merchants Transfer & Warehouse Co.
Terminal Warehouse Co.

TEXARKANA
Hunter Transfer & Storage Co.

LOUISIANA

ALEXANDRIA
Carnahan's Transfer & Storage Co.
Trousdale, Wright & Keller, Inc.

BATON ROUGE
S. A. Harris Transfer & Stge. Co., Inc.
Port of Baton Rouge, Municipal Docks, Term. & Whse.

LAKE CHARLES
United Whse. & Forwarding Co., Inc.

MONROE
W. M. Black & Company
Faulk-Collier Bonded Warehouses, Inc.
Monroe Transfer & Whse. Co., Inc.
Trousdale & Wright, Inc.

NEW ORLEANS
Acme Warehouses
Appalachian Warehouses
Army Base Unit No. 2, Douglas Shipside Storage Corp.
Bienville Warehouse Corporation
Commercial Terminal Warehouse Co.
Cottam Block Warehouse
Dietrich & Wiltz, Inc.

LOUISIANA (Continued)

NEW ORLEANS (Continued)
Douglas Public Service Corp.
Douglas Shipside Storage Corp.
Gough Brokerage Company, Inc.
Importers Bonded Warehouse Company
Independent Warehouse Co., Inc.
Kentucky Coffee Warehouse Co.
Maloney Trucking & Storage, Inc.
New Orleans Compress Company, Inc.
Orleans Warehouses Corp., Inc.
Pelican Storage & Transfer Company
Rebecca-Fabacher, Inc.
Riverside Warehouses, Inc.
Shipside Storage Co., Inc.
Standard Warehouse Co., Inc.

SHREVEPORT
Caddo Transfer & Warehouse Co., Inc.
Herrin Transfer & Warehouse Co., Inc.
McGee Warehouse & Storage Co.
O. K. Storage & Van Co., Inc.
Terminal Warehouse & Trf. Co., Inc.

NEW MEXICO

ALBUQUERQUE
Shufflebarger Transfer & Storage Co., Inc.
Springer Transfer Co., Inc.

OKLAHOMA

ADA
Couch Transfer & Storage Co.

CHICKASHA
Painter Transfer & Storage Co.

CLINTON
Clinton Transfer & Storage Co.

GUTHRIE
A. R. Davis Transfer & Storage Company
Fairfield Transfer Company

220 **OKLAHOMA (Continued)**

MUSKOGEE
Muskogee Transfer & Storage Co.

OKLAHOMA CITY
Commercial Warehouse Co.
O. K. Transfer & Storage Co.
Oklahoma Bonded Warehouse
The Public Warehouse Co.
Red Ball, Inc.
Reliable Van & Warehouse Co.

TULSA
Federal Van & Storage Company
Joe Hedges Fireproof Warehouses
Nichols Transfer & Storage Co.
Tulsa Terminal Storage & Transfer Co.

TEXAS

ABILENE
Abilene Storage Co.
J. D. Moore Transfer & Storage Co.
W. T. Wilson Transfer & Storage Co.

AMARILLO
Amarillo Warehouse Co.
American Warehouse & Storage Co.
Armstrong Transfer & Storage Co., Inc.
Bishop Warehouse & Storage Co.
M. & L. Transfer & Storage Co.
McKnight Transfer, Livery & Sales Co.

AUSTIN
Central Forwarding, Incorporated
Merchants Transfer & Storage Co.
Patton's, Inc. Operating as Patton Transfer Co.
Scobey Fireproof Storage Co.

BEAUMONT
Heisig Storage & Transfer Co.
Terminal Warehouse & Storage Co.

BROWNSVILLE
Jones Transfer & Storage Co.

CORPUS CHRISTI
Corpus Christi Transfer Co., Inc.
Corpus Christi Whse. & Storage Co.
Crocker Transfer & Storage Co.
Lone Star Warehouse & Storage
State Bonded Warehouse Co.

CORSICANA
Corsicana-Trinity Warehouse Co.

DALLAS
Ahart Van & Storage Company
American Transfer & Storage Co.
Binyon-O'Keefe Fireproof Storage Co.
Central Forwarding Co., Inc.
Dallas Transfer & Terminal Whse. Co.
Dallas-Trinity Warehouse Co.
Gillette Transfer & Storage Co.
Inter-State Fireproof Stge. & Transfer Co.
Koon-McNatt Storage & Transfer Co.
Merchants Cold Storage Co.
Morgan Warehouse & Commercial Co.
Preston Warehouse
Service Warehouse Co.
Shannon Warehouse Service
The Shippers Warehouse Co.
Sproles Transfer & Storage Co.

TEXAS (Continued)

FORT WORTH (Continued)
Fort Worth Warehouse & Storage Co.
O. K. Warehouse Co., Inc.
Sproles Transfer & Storage Co.
Texas & Pacific Terminal Whse. Co.

GALVESTON
Cotton Concentration Company, Inc.
John W. Focke Distributors Warehouse
Moon Brothers, Inc.
Wald Transfer & Storage Company
Wiley & Nicholls Co.

HARLINGEN
Jones Transfer & Storage Co.

HOUSTON
American Bonded Warehouse Co.
Buffalo Warehouse Co.
Central Forwarding Company, Inc.
J. M. David
Herrin Transfer & Warehouse Co.
Houston Central Warehouse Co., Inc.
Houston Compresa
Houston Port Warehouse Co.
Houston Terminal Whse. & Cold Stge. Co.
Houston Transfer Company, Inc.
E. A. Hudson Transfer & Warehouse Co., Inc.
Manchester Terminal Corp.
Patrick Transfer & Storage Co.
Port Warehouse & Forwarding Co.
Texas Port City Stge. & Trans. Co., Inc.
Texas Warehouse Co.
The Tidewater Warehouse Co., Inc.
Union Transfer & Storage Co.
Universal Terminal Warehouse Co.
Wald Transfer & Storage Co.
Westheimer Transfer & Storage Co.

LAREDO
J. C. Netzer Company

LUBBOCK
Armstrong Transfer & Storage Co., Inc.
Lubbock Transfer & Storage Company

McALLEN
Jones Transfer & Storage Co.
McAllen Transfer & Storage Co.

PARIS
Paris Transfer & Storage Co.

PLAINVIEW
Plainview Warehouse & Storage Co.

PORT ARTHUR
J. Imhoff & Sons

SAN ANGELO
San Angelo Transfer Co.

SAN ANTONIO
Central Forwarding Company, Inc.
Central Warehouse & Storage Co., Inc.
Linnartz & Frey, Inc.
Merchants Transfer & Storage Co.
Muegge-Jenull Warehouse Co.
Scobey Fireproof Storage Co.
Security Bonded Warehousing Co.
Southern Transfer Co., Inc.
State Bonded Warehouse Co.

SWEETWATER
Sweetwater Transfer Co.

Nichols Transfer & Storage Co.
Tulsa Terminal Storage & Transfer Co.

TEXAS

ABILENE
Abilene Storage Co.
J. D. Moore Transfer & Storage Co.
W. T. Wilson Transfer & Storage Co.

AMARILLO
Amarillo Warehouse Co.
American Warehouse & Storage Co.
Armstrong Transfer & Storage Co., Inc.
Bishop Warehouse & Storage Co.
M. & L. Transfer & Storage Co.
McKnight Transfer, Livery & Sales Co.

AUSTIN
Central Forwarding, Incorporated
Merchants Transfer & Storage Co.
Patton's, Inc. Operating as Patton Transfer Co.
Scobey Fireproof Storage Co.

BEAUMONT
Heisig Storage & Transfer Co.
Terminal Warehouse & Storage Co.

BROWNSVILLE
Jones Transfer & Storage Co.

CORPUS CHRISTI
Corpus Christi Transfer Co., Inc.
Corpus Christi Whse. & Storage Co.
Crocker Transfer & Storage Co.
Lone Star Warehouse & Storage
State Bonded Warehouse Co.

CORSICANA
Corsicana-Trinity Warehouse Co.

DALLAS
Ahart Van & Storage Company
American Transfer & Storage Co.
Binyon-O'Keefe Fireproof Storage Co.
Central Forwarding Co., Inc.
Dallas Transfer & Terminal Whse. Co.
Dallas-Trinity Warehouse Co.
Gillette Transfer & Storage Co.
Inter-State Fireproof Stge. & Transfer Co.
Koon-McNatt Storage & Transfer Co.
Merchants Cold Storage Co.
Morgan Warehouse & Commercial Co.
Preston Warehouse
Service Warehouse Co.
Shannon Warehouse Service
The Shippers Warehouse Co.
Sproles Transfer & Storage Co.

EDINBURG
Jones Transfer & Storage Co.

EL PASO
Achterberg Warehouse Co.
El Paso Fireproof Storage Co.
International Warehouse Co., Inc.
Charles G. Schnaibel Warehouse
Security Fireproof Storage Co.

FORT WORTH
Binyon-O'Keefe Fireproof Storage Co.
Central Forwarding Company, Inc.
Fort Worth Distributing Co.
Ft. Worth-Trinity Warehouse Co.

Jones Transfer & Storage Co.

HOUSTON
American Bonded Warehouse Co.
Buffalo Warehouse Co.
Central Forwarding Company, Inc.
J. M. David
Herrin Transfer & Warehouse Co.
Houston Central Warehouse Co., Inc.
Houston Compress
Houston Port Warehouse Co.
Houston Terminal Whse. & Cold Stge. Co.
Houston Transfer Company, Inc.
E. A. Hudson Transfer & Warehouse Co., Inc.
Manch ster Terminal Corp.
Patric Transfer & Storage Co.
Port arehouse & Forwarding Co.
Texas Port City Stge. & Trans. Co., Inc.
Texas Warehouse Co.
The Tidewater Warehouse Co., Inc.
Union Transfer & Storage Co.
Universal Terminal Warehouse Co.
Wald Transfer & Storage Co.
Westheimer Transfer & Storage Co.

LAREDO
J. C. Netzer Company

LUBBOCK
Armstrong Transfer & Storage Co., Inc.
Lubbock Transfer & Storage Company

McALLEN
Jones Transfer & Storage Co.
McAllen Transfer & Storage Co.

PARIS
Paris Transfer & Storage Co.

PLAINVIEW
Plainview Warehouse & Storage Co.

PORT ARTHUR
J. Imhoff & Sons

SAN ANGELO
San Angelo Transfer Co.

SAN ANTONIO
Central Forwarding Company, Inc.
Central Warehouse & Storage Co., Inc.
Linnarts & Frey, Inc.
Merchants Transfer & Storage Co.
Muegge-Jenull Warehouse Co.
Scobey Fireproof Storage Co.
Security Bonded Warehousing Co.
Southern Transfer Co., Inc.
State Bonded Warehouse Co.

SWEETWATER
Sweetwater Transfer Co.

TYLER
Tarry Transfer & Storage Company
Tyler Warehouse & Transfer Co.

WACO
Central Forwarding, Inc.
Eubank Brokerage Company
Sproles Transfer & Storage Co.
Texas Fireproof Storage Co.
Turner Brothers Brokerage Company

WICHITA FALLS
Albright Transfer & Storage Company
Elkin Transfer & Storage Company
Sproles Transfer & Storage Co.
Tarry Warehouse & Storage Co., Inc.

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REGION 8

COLORADO

ALAMOSA
W. A. Jones Transfer Co.

COLORADO SPRINGS
The Pikes Peak Warehousing Co.
The Wandell & Lowe Tri. & Stge. Co.

DENVER
Amick Transfer & Storage Company
Bankers Warehouse Co.
Colorado Warehouse Co.
Duffy Storage & Moving Co.
C. Paul Harrington
Kennicott Patterson Warehouse Corp.
Merchants Storage & Transfer Company
Morgan Transfer & Storage Co.
Morris Warehouse Co.
North Denver Transfer & Storage Co.
Rocky Mountain Warehouse Company
Security Storage Co., Inc.
United States Transfer & Storage Warehouse Co.
Weicker Transfer & Storage Co.

GRAND JUNCTION
J. W. Milne Transfer & Storage
E. W. Terrill Transfer & Storage

GREELEY
Union Delivery Company

LONGMONT
Golden Transfer Company

LOVELAND
Gateway Coal & Transfer Company

PUEBLO
Burch Warehouse & Transfer Co.

IDAHO

BOISE
Boise Cold Storage Company
Compton Transfer and Storage Company
Idaho Distributors, Inc.
Peasley Transfer & Storage Co.

LEWISTON
Eagle Transfer & Storage Co.
Star Dray & Transfer Co.

POCATELLO
Garrett Transfer & Storage Co., Inc.
Jennings-Cornwall Warehouses, Inc.

TWIN FALLS
Garrett Transfer & Storage Co., Inc.

OREGON

EUGENE
Pacific Transfer & Storage Co.
Security Warehouse & Storage Company

KLAMATH FALLS

COLORADO (Continued)

TRINDAD
Couey Storage & Transfer
Pople Transfer & Storage Company

WALSENBURG
Jellison Transfer & Storage Company

UTAH

OGDEN
Interstate Terminal Warehouse Co., Inc.
Western Gateway Storage Co.

SALT LAKE CITY
Central Warehouse
Dooly Terminal Warehouse
Hadley Transfer & Storage Co.
Jennings-Cornwall Warehouse Co.
M. A. Keyser Fireproof Storage Co.
Korns Warehouse Co.
Redman Van & Storage Co.
Security Storage & Commission Co.

WYOMING

CASPER
Casper Transfer & Storage Company
Castledine Transfer & Storage Company
Head Warehouse
Merchants Warehouse & Transfer Company
Natrona Transfer & Storage Company

CHEYENNE
Barlow Brothers Transfer Company
Cheyenne Transfer & Storage Co.

SHERIDAN
Church Warehouse Company

REGION 9

OREGON (Continued)

PORTLAND (Continued)
Manning Warehouse & Transfer Co.
Miers & Bockenfeld, Incorporated
Northwestern Transfer Co.
Olsen-Roe Transfer Co.
Oregon Auto Despatch
Oregon Transfer Company
Pacific Storage & Delivery Company
Pacific Transfer & Storage Company, Inc.
Package Delivery Co.
T. E. Pearson Storage Company
Pihl Transfer & Storage Co.
Portland Auto Delivery Co.
Rapid Transfer & Storage Co., Inc.
Rudie Wilhelm Warehouse Co., Inc.
Sills Truck Service, Incorporated
Weeks Company, Transfer.

ROSEBURG
H. S. French Transfer & Storage Co.

WASHINGTON

ABERDEEN
A. A. Star Transfer Co.

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REGION 8

COLORADO

ALAMOSA
W. A. Jones Transfer Co.

COLORADO SPRINGS
The Pikes Peak Warehousing Co
The Wandell & Lowe Trf. & Stge. Co.

DENVER
Amick Transfer & Storage Company
Bankers Warehouse Co.
Colorado Warehouse Co.
Duffy Storage & Moving Co.
C. Paul Harrington
Kennicott Patterson Warehouse Corp.
Merchants Storage & Transfer Company
Morgan Transfer & Storage Co.
Morris Warehouse Co.
North Denver Transfer & Storage Co.
Rocky Mountain Warehouse Company
Security Storage Co., Inc.
United States Transfer & Storage Warehouse Co.
Weicker Transfer & Storage Co.

GRAND JUNCTION
J. W. Milne Transfer & Storage
E. W. Terrill Transfer & Storage

GREELEY
Union Delivery Company

LONGMONT
Golden Transfer Company

LOVELAND
Gateway Coal & Transfer Company

PUEBLO
Burch Warehouse & Transfer Co.

COLORADO (Continued)

TRINDAD
Couey Storage & Transfer
Pople Transfer & Storage Company

WALSENBURG
Jellison Transfer & Storage Company

UTAH

OGDEN
Interstate Terminal Warehouse Co., Inc.
Western Gateway Storage Co.

SALT LAKE CITY
Central Warehouse
Dooly Terminal Warehouse
Hadley Transfer & Storage Co.
Jennings-Cornwall Warehouse Co.
M. A. Keyser Fireproof Storage Co.
Kohns Warehouse Co.
Redman Van & Storage Co.
Security Storage & Commission Co.

WYOMING

CASPER
Casper Transfer & Storage Company
Castledine Transfer & Storage Company
Head Warehouse
Merchants Warehouse & Transfer Company
Natrona Transfer & Storage Company

CHEYENNE
Barlow Brothers Transfer Company
Cheyenne Transfer & Storage Co.

SHERIDAN
Church Warehouse Company

REGION 9

IDAHO

BOISE
Boise Cold Storage Company
Compton Transfer and Storage Company
Idaho Distributors, Inc.
Peasley Transfer & Storage Co.

LEWISTON
Eagle Transfer & Storage Co.
Star Dray & Transfer Co.

POCATELLO
Garrett Transfer & Storage Co., Inc.
Jennings-Cornwall Warehouses, Inc.

TWIN FALLS
Garrett Transfer & Storage Co., Inc.

OREGON

EUGENE
Pacific Transfer & Storage Co.
Security Warehouse & Storage Company

KLAMATH FALLS
Peoples Warehouse

OREGON (Continued)

PORTLAND (Continued)
Manning Warehouse & Transfer Co.
Miers & Bockenfeld, Incorporated
Northwestern Transfer Co.
Olsen-Roe Transfer Co.
Oregon Auto Despatch
Oregon Transfer Company
Pacific Storage & Delivery Company
Pacific Transfer & Storage Company, Inc.
Package Delivery Co.
T. E. Pearson Storage Company
Pihl Transfer & Storage Co.
Portland Auto Delivery Co.
Rapid Transfer & Storage Co., Inc.
Rudie Wilhelm Warehouse Co., Inc.
Sills Truck Service, Incorporated
Weeks Company, Transfer

ROSEBURG
H. S. French Transfer & Storage Co.

WASHINGTON

ABERDEEN
A. A. Star Transfer Co.

Bankers Warehouse Co.
Colorado Warehouse Co.
Duffy Storage & Moving Co.
C. Paul Harrington
Kennicott Patterson Warehouse Corp.
Merchants Storage & Transfer Company
Morgan Transfer & Storage Co.
Morris Warehouse Co.
North Denver Transfer & Storage Co.
Rocky Mountain Warehouse Company
Security Storage Co., Inc.
United States Transfer & Storage Warehouse Co.
Weicker Transfer & Storage Co.

GRAND JUNCTION
J. W. Milne Transfer & Storage
E. B. Terrill Transfer & Storage

GREELEY
Union Delivery Company

LONGMONT
Golden Transfer Company

LOVELAND
Gateway Coal & Transfer Company

PUEBLO
Burch Warehouse & Transfer Co.

IDAHO

BOISE
Boise Cold Storage Company
Compton Transfer and Storage Company
Idaho Distributors, Inc.
Peasley Transfer & Storage Co.

LEWISTON
Eagle Transfer & Storage Co.
Star Dray & Transfer Co.

POCATELLO
Garrett Transfer & Storage Co., Inc.
Jennings-Cornwall Warehouses, Inc.

TWIN FALLS
Garrett Transfer & Storage Co., Inc.

OREGON

EUGENE
Pacific Transfer & Storage Co.
Security Warehouse & Storage Company

KLAMATH FALLS
Peoples Warehouse

PENDLETON
Fenland Bros. Transfer Co.

PORTLAND
Alert Transfer & Storage Co.
Baggage & Omnibus Transfer Co.
Colonial Warehouse & Transfer Co.
Crescent Transfer & Warehouse Company
Haslett Warehouse Company
Helser Bros. Transfer Co.
Holman Transfer Co.
Hunt Transfer Co., Inc.
Lyon Van & Storage Co.

OGDEN
Interstate Terminal Warehouse Co., Inc.
Western Gateway Storage Co.

SALT LAKE CITY
Central Warehouse
Dooly Terminal Warehouse
Hadley Transfer & Storage Co.
Jennings-Cornwall Warehouse Co.
M. A. Keyser Fireproof Storage Co.
Korns Warehouse Co.
Redman Van & Storage Co.
Security Storage & Commission Co.

WYOMING

CASPER
Casper Transfer & Storage Company
Castledine Transfer & Storage Company
Head Warehouse
Merchants Warehouse & Transfer Company
Natrona Transfer & Storage Company

CHEYENNE
Barlow Brothers Transfer Company
Cheyenne Transfer & Storage Co.

SHERIDAN
Church Warehouse Company

REGION 9

OREGON (Continued)

PORTLAND (Continued)
Manning Warehouse & Transfer Co.
Miers & Boekenfeld, Incorporated
Northwestern Transfer Co.
Olsen-Roe Transfer Co.
Oregon Auto Despatch
Oregon Transfer Company
Pacific Storage & Delivery Company
Pacific Transfer & Storage Company, Inc.
Package Delivery Co.
T. E. Pearson Storage Company
Pihl Transfer & Storage Co.
Portland Auto Delivery Co.
Rapid Transfer & Storage Co., Inc.
Rudie Wilhelm Warehouse Co., Inc.
Sills Truck Service, Incorporated
Weeks Company, Transfer

ROSEBURG
H. S. French Transfer & Storage Co.

WASHINGTON

ABERDEEN
A. A. Star Transfer Co.

BELLINGHAM
Freeman Transfer
Pacific Highway Transport

EVERETT
Pacific Highway Transport

HOQUIAM
Grayport Transfer & Storage Company

OLYMPIA
Olympia Warehouse & Distr. Company

PULLMAN
Auto Transfer & Storage

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WASHINGTON (Continued)

SEATTLE
A. B. C. Storage Co.
Acme Cartage Company, Incorporated
American Warehouse Co.
C. & N. Transfer & Storage Company
Christie-Lambert Van & Storage Co., Inc.
City Transfer & Storage Co.
Eyres Transfer & Warehouse Co.
Fortune Transfer Company
Hullin Transfer Co.
Merchants Transfer & Storage Co.
Olympic Warehouse & Cold Storage Co.
Owl Transfer & Storage Co.
Pike Warehouse Company
Reliable Transfer & Storage Co.
Seattle Transfer & Storage Co.
Standard Warehouse Company
System Transfer & Storage Co.
Taylor-Edwards Whse. & Transfer Co., Inc.
Transport Storage & Distributing Company
United Warehouse Co.
Van Waters & Rogers, Inc.
Winn & Russell, Inc.

SPOKANE
Beardmore Transfer Line Corp.
Cater Transfer & Storage Co.
Goodwin Transfer & Storage Co.
Grimmer Storage & Truck Line, Inc.

WASHINGTON (Continued)

SPOKANE (Continued)
Kelly Clarke Company
McAllister Warehouse Co., Inc.
National Storage & Warehouse Co.
Pacific Transfer Co.
Riverside Warehouse
Spokane Transfer & Storage Co.

TACOMA
Acme Transfer & Storage Company, Inc.
Kenworthy Grain & Milling Company
McLean the Mover, Incorporated
Pacific Highway Transport
Pacific Storage Whse. & Distr. Co., Inc.
Star Commercial Moving & Storage Co.
Tacoma Moving & Storage Co.

WALLA WALLA
Bryant Transfer
Maskelyne Brothers Transfer & Storage

WENATCHEE
Arrow Transfer & Storage Co.
Eagle Livery & Transfer Company, Inc.
Wenatchee Auto Express

YAKIMA
Redmon-Fairchild, Incorporated
Yakima Transfer & Storage Company

REGION 10

ARIZONA

PHOENIX
Arrow Van & Storage Co.
Central Transfer & Storage Company
Chambers Transfer & Storage Co.
Lightning Delivery Co.

PRESCOTT
Prescott Transfer & Storage Company

TUCSON
Citizens Transfer & Storage Company, Inc.
Tucson Warehouse & Transfer Co.

CALIFORNIA

BERKELEY
Bekins Van & Storage Company

BEVERLY HILLS
Bekins Van & Storage Company

FRESNO
Bekins Van & Storage Co.
State Center Warehouse & Cold Storage Co., Inc.
Terminal Warehouse Co.

GLENDALE
Bekins Van & Storage Company

HOLLYWOOD
Hollywood Storage Company, Inc.

LONG BEACH
City Transfer & Storage Co.
Lyon Van & Storage Company

CALIFORNIA (Continued)

LOS ANGELES (Continued)
H. & J. Truck Company
Jennings-Nibley Warehouse Co., Ltd.
F. C. Johnson
Los Angeles Brewing Co.
Los Angeles Warehouse Co.
Metropolitan Warehouse Co.
Modern Warehouses, Inc.
Overland Terminal Warehouse Co.
Pacific Coast Terminal Warehouse Co.
Pacific Commercial Warehouse Company
Pacific Transportation & Warehouse Co.
Richards Trucking & Warehouse Company
Seaboard Warehouse
Smith Brothers Truck Company
Star Truck & Warehouse Co.
Union Terminal Warehouse
Western Warehouse & Transfer Co.
Westland Warehouses, Inc.

LOS ANGELES HARBOR
City & Harbor Warehouse, Ltd.
Crescent Warehouse Co.
Wilmington Transfer & Storage Co.

OAKLAND
Bekins Van & Storage Company
The Haslett Warehouse Co.
Howard Terminal
Oakland Warehouse Terminals, Div. of Merchants Exp. & Draying Co.

PASADENA
Bekins Van & Storage Company

RICHMOND

System Transfer & Storage Co.
Taylor-Edwards Whse. & Transfer Co., Inc.
Transport Storage & Distributing Company
United Warehouse Co.
Van Waters & Rogers, Inc.
Winn & Russell, Inc.

SPOKANE
Beardmore Transfer Line Corp.
Cater Transfer & Storage Co.
Goodwin Transfer & Storage Co.
Grimmer Storage & Truck Line, Inc.

WALLA WALLA
Bryant Transfer
Maskelyne Brothers Transfer & Storage

WENATCHEE
Arrow Transfer & Storage Co.
Eagle Livery & Transfer Company, Inc.
Wenatchee Auto Express

YAKIMA
Redmon-Fairchild, Incorporated
Yakima Transfer & Storage Company

REGION 10

ARIZONA

PHOENIX
Arrow Van & Storage Co.
Central Transfer & Storage Company
Chambers Transfer & Storage Co.
Lightning Delivery Co.

PRESCOTT
Prescott Transfer & Storage Company

TUCSON
Citizens Transfer & Storage Company, Inc.
Tucson Warehouse & Transfer Co.

CALIFORNIA

BERKELEY
Bekins Van & Storage Company

BEVERLY HILLS
Bekins Van & Storage Company

FRESNO
Bekins Van & Storage Co.
State Center Warehouse & Cold Storage Co., Inc.
Terminal Warehouse Co.

GLENDALE
Bekins Van & Storage Company

HOLLYWOOD
Hollywood Storage Company, Inc.

LONG BEACH
City Transfer & Storage Co.
Lyon Van & Storage Company
Pacific & Orient Dock

LOS ANGELES
American Warehouse
Bekins Van Lines, Inc.
Birch-Smith Storage Co.
California Warehouse Co.
Central Warehouse & Storage Company
H. G. Chaffee Warehouse Co.
Citizens Warehouse
J. A. Clark Draying Company, Ltd.
Colyear's Van & Storage Co.
Cook-McFarland Co.
Davies Warehouse Co.
G. Eckdahl & Son Warehouse Co.
Farmers Grain & Milling Company

CALIFORNIA (Continued)

LOS ANGELES (Continued)
H. & J. Truck Company
Jennings-Nibley Warehouse Co., Ltd.
F. C. Johnson
Los Angeles Brewing Co.
Los Angeles Warehouse Co.
Metropolitan Warehouse Co.
Modern Warehouses, Inc.
Overland Terminal Warehouse Co.
Pacific Coast Terminal Warehouse Co.
Pacific Commercial Warehouse Company
Pacific Transportation & Warehouse Co.
Richards Trucking & Warehouse Company
Seaboard Warehouse
Smith Brothers Truck Company
Star Truck & Warehouse Co.
Union Terminal Warehouse
Western Warehouse & Transfer Co.
Westland Warehouses, Inc.

LOS ANGELES HARBOR
City & Harbor Warehouse, Ltd.
Crescent Warehouse Co.
Wilmington Transfer & Storage Co.

OAKLAND
Bekins Van & Storage Company
The Haslett Warehouse Co.
Howard Terminal
Oakland Warehouse Terminals, Div. of Merchants Exp. & Draying Co.

PASADENA
Bekins Van & Storage Company

RICHMOND
Parr-Richmond Terminal Corp., Ltd.

SACRAMENTO
Bekins Van & Storage Company
Haslett Warehouse Co.
Lawrence Warehouse & Distributing Company
Western Van & Storage Company

SAN BERNARDINO
Associated Warehouse & Truck Company, Inc.

SAN DIEGO
Bekins Van & Storage Company
Lyon Van & Storage Co.

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CALIFORNIA (Continued)

SAN FRANCISCO
A. B. C. Transfer & Storage Co.
Bekins Van & Storage Company
Blahaw Warehouse Co.
Central Warehouse & Drayage Co.
J. A. Clark Draying Co., Ltd.
De Pue Warehouse Co.
A. M. Devincenzi
Distributors Warehouse Co.
The Dodd Warehouses
J. Theo. Erlin Co.
Farnsworth & Ruggles
Haslett Warehouse Co.
The Johnson-Locke Mercantile Company
Charles F. Kane & Company
Lawrence Warehouse Co.
George W. Metlar Company, Inc.
Morgan & Samson Company
Frank Nolan Drayage & Warehouse Company
North Point Dock Warehouses
Parr-Richmond Terminal Corporation, Ltd.
San Francisco Warehouse Co.
Sea Wall U. S. Bonded Warehouse
South End Warehouse Co.
Souther Warehouse Company
Thompson Bros.
Charles Lee Tilden & Co.
Turner-Whittell Warehouses
Walkup Drayage & Warehouse Co.
Warehouse Service Company

CALIFORNIA (Continued)

SAN JOSE
James Transfer & Storage Co.
Security Warehouse & Cold Storage Co.

SAN PEDRO
Outer-Harbor Dock & Wharf Co.

SANTA BARBARA
Bekins Van & Storage Company
Lyon Van & Storage Company

STOCKTON
Haslett Warehouse Co.
Overland Transfer Co.

NEVADA

RENO
Nevada Transfer & Warehouse Co.
Pearl Upson & Son

663974 O - 45 (Face $ 206) No. 26

224 RAILROAD RETIREMENT BOARD

Proposed Decision

In the Matter of) Jurisdictional
Duquesne Warehouse Company) Docket No. 18

DECISION OF THE BOARD

Introductory

In order to enable determination of claims for annuities under the Railroad Retirement Act based in part upon service rendered to the Duquesne Warehouse Company, herein called Duquesne, the General Counsel, under duly delegated authority, ruled that Duquesne is an "employer" within the meaning of the Railroad Retirement Act and that, consequently, service rendered to it from August 1, 1906, the date of its incorporation, to date, is creditable toward annuities under that Act. General Counsel's Opinion on *Duquesne Warehouse Company*, May 23, 1939. The ruling of the General Counsel was based on Duquesne's response to the Board's Questionnaire Form LQ-2 (revised) which is contained in the record herein.

At a hearing on September 15, 1939 before Board Members Eddy and Reed, Duquesne protested the ruling of the General Counsel and submitted a memorandum in support of its position and a completed Board Questionnaire Form LQ-2-c.

Upon requests of counsel, Duquesne was allowed until February 15, 1940 to file further evidence and argu-
225 ment in support of its position that it is not an "employer" within the meaning of the Railroad Retirement Act. Duquesne filed, on February 14, 1940, a memorandum of law, and a statement of facts which is made part of the record herein.

The case is now before the Board for determination upon the questionnaire forms completed by Duquesne, Duquesne's memorandum filed on September 15, 1939, and Duquesne's statement of facts filed on February 14, 1940.

The issue presented in this case may be stated as follows:

Whether Duquesne, as a company directly and completely owned and controlled by the Pennsylvania Railroad

Company, herein called Pennsylvania, a carrier by railroad subject to Part I of the Interstate Commerce Act and an "employer" under the Railroad Retirement Act, is an "employer" under that Act because it is engaged in the non-casual operation of any equipment or facility or the performance of any non-casual service, other than trucking service, in connection with the transportation of property by railroad, or the receipt, delivery, transfer in transit, storage, or handling of property transported by railroad.

After careful consideration of the record herein, we make the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Duquesne was caused by Pennsylvania to be incorporated on August 1, 1906, under the laws of the State of Pennsylvania. Since Duquesne's incorporation, it has been directly and completely owned and controlled, through stock ownership, by Pennsylvania.

226 2. Most of Duquesne's principal officers are also officers of Pennsylvania, the identity and positions of such common officers being, as of February 17, 1939, as follows:

Duquesne Office	Pennsylvania Office
E. W. Smith, President and Director	Vice President
W. S. Franklin, Director	Vice President
J. Toney Willcox, Secretary	Secretary
J. Gordon Watson, Assistant Secretary	Assistant Secretary
Geo. H. Papst, Jr., Treasurer	Assistant Vice President and Treasurer
H. W. Schotter, Assistant Treasurer	Assistant Treasurer
John Pemberton, Jr., Assistant Treasurer	Assistant Treasurer
F. J. Fell, Jr., Comptroller	Vice President and Comptroller
Elmer Hart, Assistant Comptroller	Deputy Comptroller
A. R. Meredith, Real Estate Agent	Real Estate Agent

3. Duquesne's operations are now and have been at least since August 28, 1935, intimately and integrally related to those of Pennsylvania. Duquesne has been primarily, principally and predominantly engaged in the storage, loading and unloading, and other handling of goods transported over the lines of Pennsylvania, being in substance an agency of Pennsylvania for such purposes.

4. The two warehouses operated by Duquesne, which are located at East Liberty and Pittsburgh, Pennsylvania, have been valuable links in the chain of Pennsylvania's railroad transportation. They are owned by Pennsylvania,

being operated by Duquesne under lease from Pennsylvania. A portion of the ground floor of each warehouse is retained by Pennsylvania and used and officially designated by it as its "freight agency." Duquesne's warehouses, as well as Pennsylvania's "freight agencies," are served by Pennsylvania's railroad tracks and are
227 equipped with platforms or sidings and other facilities for the receipt, delivery, and other handling of inbound and outbound freight.

5. At the East Liberty warehouse, Duquesne handles and stores only one commodity, carload sugar, which comes in and goes out over Pennsylvania's rails. The sugar is handled by Duquesne under storage-in-transit privileges permitted and covered by railroad tariffs filed by Pennsylvania with the Interstate Commerce Commission. Part of the sugar which passes through Duquesne's warehouse is refined in California and part in New York. That refined in California is moved by ship to one of the eastern ports, such as Philadelphia or Baltimore, and thence by rail to Pittsburgh; and that refined in New York is shipped by rail directly from New York to Pittsburgh. At Duquesne's warehouse, which is used as a distribution center, the packages of sugar are assembled in the proper numbers and sizes and then shipped out over Pennsylvania's lines for distribution. Incoming shipments are consigned to the owner care of Duquesne, the route being designated as "Penn R R—For Stge in Transit"; and outgoing shipments are consigned to the owner, the bill of lading having a transit record number and being marked "accorded transit privilege at East Liberty, Pa." Both the unloading of the sugar from, and its reloading into, Pennsylvania cars are performed by Duquesne at the latter's siding for the account of the shipper in accordance with the governing rail tariff (Consolidated Freight Classification No. 13) requiring owners to load and unload freight carried at carload rates. In the case of incoming sugar, delivery is made by Pennsylvania and receipt is taken by Duquesne when
Pennsylvania places the cars on Duquesne's siding,
228 and Duquesne then unloads. In the case of outgoing shipments, the empty cars are placed by Pennsylvania on Duquesne's siding and loaded by Duquesne, which then receives Pennsylvania's bill of lading. The handling and storage charges are billed by Duquesne directly against

the owners of the property and are paid by such owners.

6. At its Pittsburgh warehouse, Duquesne is primarily, principally and predominantly engaged in the handling of freight which has come in, or is destined for movement, over Pennsylvania's rails, or which has both come in and is going out over Pennsylvania's rails. Approximately 95 per cent of the commodities handled at that place, which commodities are diverse in character and are hauled in both carload and less-than-carload form, come in by rail, the remainder coming in by truck. The respective rail and truck percentages of the outgoing commodities are 60 and 40. The services performed by Duquesne at the Pittsburgh warehouse are similar to those at East Liberty insofar as carload freight is concerned, except that no sugar is handled. As to the less-than-carload freight, Duquesne, in addition to storing it, performs the handling involved in delivering it to and receiving it from Pennsylvania's platform. The loading and unloading of less-than-carload freight is performed by Pennsylvania at its platform. In the case of incoming less-than-carload shipments, the freight is unloaded by Pennsylvania from the cars to its platform and is delivered to and received by Duquesne on such platform. In the case of outgoing less-than-carload shipments, Duquesne delivers the freight onto Pennsylvania's platform; Pennsylvania then issues its bill of lading, loads the freight into the cars, and moves them out.

229 7. Duquesne also performed, during the period between August, 1937 and May, 1938, unloading, storing, and reloading services and other transit details at Erie, Pennsylvania, in connection with carload shipments of newspaper print entitled to storage-in-transit privileges under Pennsylvania's tariffs. Duquesne stands ready to resume its services at Erie when the need therefor arises.

8. Duquesne's position as an agency of Pennsylvania, available to provide such facilities and services as the latter requires, appears further from Duquesne's handling, reconditioning, and selling for Pennsylvania over freight, damaged refused freight, and damaged unclaimed freight under a contract entered into between the two companies on February 1, 1922. Pursuant to this contract Pennsylvania transports to Pittsburgh any freight it desires to be disposed of by Duquesne and Duquesne removes such freight to its warehouse after the payment to Pennsylvania

of all freight and other charges that may have accrued thereon. Out of the gross proceeds realized by it from each sale, Duquesne deducts a commission of ten per cent and any amounts paid by it for reconditioning, drayage, freight, and other charges and turns the balance over to Pennsylvania. If the owner of any unclaimed freight is ascertained prior to the sale of such freight, Duquesne delivers such freight, upon instructions from Pennsylvania, to the owner and receives from the owner such charges as Duquesne has paid to Pennsylvania. In the event that the gross proceeds of the sale of freight do not equal the expenses incurred by Duquesne, plus the ten per cent commission, Duquesne is credited with the difference. If any lot of freight becomes so worthless as to be unsalable, Duquesne dis-
230 poses of it in such manner as Pennsylvania directs.

When any freight is returned by Duquesne to Pennsylvania upon the latter's order, Duquesne is reimbursed only for the actual expenses incurred by it.

9. Duquesne's revenues for the years 1936 through 1938 are indicative of the substantial extent to which it has been engaged in functions and activities connected with Pennsylvania's railroad transportation:

	Storage and handling of freight under storage-in-transit privileges	Storage and handling of other freight (including freight coming in or going out, or both, over Pennsylvania's rails)	Sale of damaged merchandise	Subleasing of space to manufacturing concerns
1936	$ 59,570.40	$ 63,011.60	$ 8,599.00	$32,732.00
1937	39,230.93	91,545.99	11,409.00	24,967.00
1938	29,845.01	73,702.99	8,881.86	16,035.17
	$119,646.34	$228,260.58	$28,889.86	$73,734.17

10. In addition to the above revenue figures, the substantial extent to which Duquesne has been engaged in the handling of freight accorded storage-in-transit privileges may be stated in terms of space used. Of the total space used by Duquesne at its warehouses at East Liberty and Pittsburgh, approximately 30 per cent was devoted to the handling of freight accorded storage-in-transit privileges in 1936; approximately 12.5 per cent, in 1937; and approximately 12.5 per cent, in 1938. During the period of operation at Erie, all the space at that point was used for such freight.

11. All of Duquesne's operations are intermingled. Duquesne's employees are not assigned exclusively to any one operation but are frequently shifted from one class 231 of work to another. The extent to which personnel is required, however, for the various operations for the years 1936 through 1938, estimated on the basis of the approximate number of men required on a full-time basis to perform the work in such operations, is as follows:

	Storage and handling of freight under storage-in-transit privileges	Storage and handling of other freight (including freight coming in or going out, or both, over Pennsylvania's rails)	Sale of damaged merchandise	Subleasing of space to tenants
1936	28	30	3	4
1937	14	42	3	4
1938	14	42	3	4
	55	114	9	12

12. Duquesne's operations are, and have been at least since August 28, 1935, integrally related to Pennsylvania's railroad transportation, being reasonably directly related, functionally and economically, to the performance of the transportation obligations which Pennsylvania has undertaken as a common carrier by railroad, and to the receipt, delivery, transfer in transit, storage, and handling of property transported by Pennsylvania by railroad.

13. Duquesne is, and has been at least since August 28, 1935, engaged in the non-casual operation of equipment and facilities and the performance of non-casual service in connection with Pennsylvania's transportation of property by railroad, other than trucking service, and the receipt, delivery, transfer in transit, storage, and handling of property transported by Pennsylvania by railroad.

232 CONCLUSIONS OF LAW

1. Duquesne is now, and has been at least since August 28, 1935, an "employer" within the meaning of Section 1(a) of the Railroad Retirement Act as a company directly owned and controlled by a "carrier employer" under the Act and engaged in the non-casual operation of equipment and facilities and the performance of non-casual services

in connection with the transportation of property by railroad, other than trucking service, and the receipt, delivery, transfer in transit, storage, and handling of property transported by railroad.

2. Service rendered to Duquesne from August 1, 1906, the date of its incorporation, to date, is creditable under the Railroad Retirement Act.

OPINION

It is undisputed that since its incorporation, Duquesne has been directly and completely owned and controlled, through stock ownership, by Pennsylvania. Therefore, the only issue here is whether Duquesne is engaged in the non-casual operation of equipment or facilities or the performance of non-casual service in connection with the transportation of property by railroad, or the receipt, delivery, transfer in transit, storage, or handling of property transported by railroad, within the meaning of Section 1(a) of the Railroad Retirement Act and Section 202.7 of the Regulations (20 Code Fed. Regs. 856.)[1]

233 That Duquesne is so engaged follows from our ruling of February 21, 1939, B.O. No. 39-84, that the Baltimore Fidelity Warehouse Company, a company operating a terminal warehouse business at points adjacent to freight terminals of the Baltimore and Ohio Railroad Company and storing goods which have been transported or are awaiting transportation by railroad, is an "employer" under the Railroad Retirement Act;[2] and from a number of decisions

[1] Although our information contains some facts with respect to the question of whether the individuals engaged in the performance of Duquesne's work are "employees" of Pennsylvania within the meaning of the Act as subject to the continuing authority of Pennsylvania to supervise and direct the manner of rendition of their compensated service, it is unnecessary to make any determination with respect to such issue in view of our conclusion that Duquesne is itself an "employer".

[2] In this connection, it may be noted that Duquesne does not question the validity of the Board's ruling in the *Baltimore Fidelity* case, but seeks rather to distinguish the *Baltimore Fidelity Warehouse Company* case from the present one on the ground that Baltimore Fidelity, in addition to its warehousing activities, solicited freight as agent for its controlling carrier. Duquesne also urges that, unlike the employees of Baltimore Fidelity, Duquesne's employees do not receive free transportation from Pennsylvania and are not subject to Pennsylvania's medical rules. Although the situation as to its employees and its minor activity of freight solicitation served to emphasize the intimate relationship between Baltimore Fidelity and its controlling carrier, the determinative factor in that case was that Baltimore Fidelity, under conditions of a close operating relationship with its parent carrier, has been engaged in the storage of goods which, for the most part, have been transported or are awaiting transportation over the lines of its parent carrier.

following that ruling. See opinions on *Lackawanna Terminal Warehouses, Inc.*, July 8, 1939; *Bush Terminal Company*, August 23, 1939; *B. R. & P. Warehouse, Inc.*, September 16, 1939; *Terminal Storage Company of Washington*, December 15, 1939.

234 Counsel for Duquesne contend that Section 1(a) of the Railroad Retirement Act is limited in scope to those services which constitute "transportation" as defined in Section 1(3) of the Interstate Commerce Act. This is a contention, long since rejected in over one hundred precedents settled in Board administration of the Railroad Retirement and Railroad Unemployment Insurance Acts. The fallacies which underlie such a contention are thoroughly discussed in our decisions in *Lenoir Car Works*, May 6, 1939, B. O. 39-291; and *Union Pacific Coal Co.*, May 31, 1940, B. O. 40-299. That discussion need not be repeated here. No reason is presented for upsetting years of administration and for calling into question large annuity obligations now in force under many Board precedents which, we have no doubt, were rightly decided.

Yet resurrection of that academic issue cannot obscure its irrelevance here, for Duquesne is engaged in many services which clearly do constitute "transportation" as that term is defined in Section 1(3) of the Interstate Commerce Act. Duquesne loads and unloads railroad cars. Such loading and unloading have repeatedly been recognized as direct and important elements of railroad transportation (*Baltimore and Ohio Southwestern Railroad Co.* v. *Burtch*, 263 U. S. 540, 544 (1924); *Atchison, Topeka & Santa Fe Railway Co.* v. *United States*, 295 U. S. 193, 198 (1935); *Loading and Unloading Carload Freight*, 101 I.C.C. 394 (1925)), and have been held to constitute "transportation" as defined in Section 1(3) of the Interstate Commerce Act. *Adams* v. *Mills*, 286 U. S. 397; *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501; *Haberman* v. *Pennsylvania R. Co.*, 234 I.C.C. 167, 173; *Loading and Unloading Carload Freight*, 101 I.C.C. 394; *McCormick*
235 *Warehouse Co.* v. *P. R.R. Co.*, 95 I.C.C. 301. As stated in our findings, Duquesne receives, delivers, and handles property transported by railroad and performs services in connection therewith. The language as to "receipt," "delivery" and "handling" in the Retirement Act and the Interstate Commerce Act is identical. Duquesne's activi-

ties in receipt, delivery and handling of property transported by railroad are plainly within the definitions of both Acts. Finally, Duquesne is also extensively engaged in performing storage-in-transit of goods transported by Pennsylvania and allowed that transit privilege under Pennsylvania's tariffs. Such storage is within the definition of "transportation" in Section 1(3) of the Interstate Commerce Act. *American Warehousemen's Association* v. *Inland Waterways Corporation*, 188 I.C.C. 13; *Storage in Transit at New Haven, Conn.*, 190 I.C.C. 209; *Storage at New London and Thamesville, Conn.*, 190 I.C.C. 213; *Propriety of Operating Practices—New York Warehousing*, 220 I.C.C. 102, 103, aff'd *Baltimore & Ohio R.R. Co.* v. *United States*, 305 U. S. 507.

Counsel for Duquesne earnestly urge that the services performed by Duquesne are not within the definition of "transportation" in Section 1(3) of the Interstate Commerce Act because Pennsylvania has not filed with the Interstate Commerce Commission and is not required to file a tariff embodying Duquesne's charges for such services. However it may be as to Pennsylvania's being under legal obligation to file such a tariff, the argument confuses definition with tariff coverage. It is settled that the definition of "transportation" in Section 1(3) of the Interstate Commerce Act includes services which a carrier may choose 236 to, but need not, perform. See *American Warehousemen's Association* v. *Inland Waterways Corporation*, *supra*, at p. 15; *McCormick Warehouse Co.* v. *P. R.R. Co.*, 95 I.C.C. 301. We are unable to find, and Duquesne presents, no plausible warrant for the assertion, implicit in its contention, that the coverage of services under Section 1(a) of the Retirement Act is limited not only to those services which are within the definition of "transportation" in Section 1(3) of the Interstate Commerce Act, but is limited even further to those services for which a carrier has filed a tariff. A program of social insurance to cover generally people engaged in railroad work could not depend, and clearly was not made by Congress to depend, upon the fortuitous choices and intricacies of tariff and rate procedures. The nature and substance of the services performed and not the choice of tariff procedures govern.[3]

[3] *Cf. New York Central R. R. Co.* v. *The Talisman*, 288 U. S. 239, 242 (1933); *Kansas City Southern Ry. Co.* v. *U. S.*, 282 U. S. 760, 764 (1931); *I. C. C.* v. *B. & O. R. R. Co.*, 225 U. S. 326, 345 (1912); *Southern Transportation Co.* v. *N. & W. Ry. Co.*, 101 I. C. C. 211, 221-222 (1925); *Atchison C. of C.* v. *Union Pacific R. R. Co.*, 196 I. C. C. 149 (1933).

Upon consideration of all cases and arguments submitted by counsel, it is found on the facts of this case that services performed by Duquesne are performed in connection with the transportation of property by railroad, and the receipt, delivery, transfer in transit, storage and handling of property transported by railroad within the meaning of those terms as they are defined in Section 1(a) of the Railroad Retirement Act, which section is controlling here, and as they are defined in Section 1(3) of the Interstate Commerce Act, which section Duquesne contends is controlling. It is held, therefore, there being no question that Pennsylvania owns and controls Duquesne, that Dequesne is and has been an "employer" within the meaning of the Railroad Retirement Act.

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This form is to be used only by the secretary of the Board or as otherwise specifically directed by the Board.	Form No. G-21 United States of America Railroad Retirement Board Transcript of Board Orders	Transcript No. Special Page 1 of 1 Page Date Transcript Released February 11, 1942

I certify that the following is a true and correct transcript of Board Order Numbered 42-63 transcribed from the Record of Proceedings of January 29, 1942.

JOHN DAVIDSON
Secretary of the Board

B.O. 42-63

ORDER

Allowing oral argument on the issue of whether Duquesne Warehouse Company is an "employer" under the Railroad Retirement Act.

1. The request of Mr. George R. Allen, Counsel for Duquesne Warehouse Company, for opportunity to present oral argument before the Board on the issue of whether Duquesne is an "employer" under the Railroad Retirement Act. Such argument shall be heard at the office of the Board, Tenth and U Streets, N. W., Washington, D. C., on March 10, 1942 at 10:00 a.m.

2. The secretary of the Board shall notify Counsel for Duquesne of the place and time for the hearing of argument and furnish him with copy of the existing draft of the proposed Board decision on the issue.

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GRAND LODGE
BROTHERHOOD OF RAILWAY AND
STEAMSHIP CLERKS,
Freight Handlers, Express and Station Employes
Brotherhood of Railway Clerks Building
Cincinnati, Ohio
Geo. M. Harrison
Grand President

File 282-42

Subject: Railroad Retirement Act—
Status of Duquesne Warehouse,
Pittsburgh—

Cincinnati, Ohio
February 10, 1942

Mr. Murray W. Latimer, Chairman,
Railroad Retirement Board,
Washington, D. C.

Dear Sir:

I understand that there is now before the Board the status of the Duquesne Warehouse, Pittsburgh.

The Brotherhood of Railway Clerks holds a contract covering these employees, and it is the Brotherhood's position that the company is subject to the Railroad Retirement and Railroad Unemployment Insurance Acts.

Will you please see that the Brotherhood is made a party to any proceedings involving the company and is given notice of hearing, argument, etc.

Very truly yours

GEO. M. HARRISON
Grand President

239

This form is to be used only by the secretary of the Board or as otherwise specifically directed by the Board.	Form No. G-21 United States of America Railroad Retirement Board Transcript of Board Orders	Transcript No. Special Page 1 of 1 Page Date Transcript Released

I certify that the following is a true and correct transcript of Board Order Numbered 42-93 transcribed from the Record of Proceedings of February 17, 1942

LORINE M. FISHER
Acting for the Secretary of the Board

B.O. 42-93

ORDER

Directing notification of the Brotherhood of Railway and Steamship Clerks of oral argument in Jurisdictional Docket No. 18, Duquesne Warehouse Company.

It having been shown that the Brotherhood of Railway and Steamship Clerks is an interested party in Jurisdictional Docket No. 18, Duquesne Warehouse Company, Board Order 42-63 is amended to provide that the secretary of the Board shall notify the Brotherhood of the time and place of the oral argument before the Board.

240 Feb 18 1942

Mr. Horace A. Bacus, Research Director
Brotherhood of Railway and Steamship Clerks
Room 701, Brotherhood of Railway Clerks Building
Cincinnati, Ohio

In the matter of Duquesne Warehouse Company
Jurisdictional Docket No. 18

Dear Sir:

Pursuant to the request of Mr. George R. Allen, Counsel for Duquesne Warehouse Company, the Board has authorized oral argument before it on the question whether Duquesne Warehouse Company is an "employer" under the Railroad Retirement Acts. The argument is to be held at the office of the Board, 10th and U Streets, N. W., Washington, D. C., on March 10, 1942, at 10:00 A. M. You may attend the oral argument and participate therein if you so desire.

Very truly yours,

JOHN C. DAVIDSON
Secretary of the Board

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This form is to be used only by the secretary of the Board or as otherwise specifically directed by the Board	Form No. G-21 United States of Ameriac Railroad Retirement Board Transcript of Board Orders	Transcript No. Special Page 1 of 1 Page Date Transcript Released

I certify that the following is a true and correct transcript of Board Order Numbered 42-119 transcribed from the Record of Proceedings of March 6, 1942.

JOHN DAVIDSON
Secretary of the Board

B.O. 42-119

ORDER

Amending Board Order 42-63 as amended by postponing the date for the receipt of Oral Argument on the issue of the "employer" status of Duquesne Warehouse Company and allowing further submissions.

1. Upon the request of Mr. George R. Allen, Counsel for Duquesne Warehouse Company

(a) The hearing of oral argument before the Board on the issue of whether Duquesne is an "employer" under the Railroad Retirement Act, scheduled by Board Order 42-63 to be heard on March 10, 1942 at 10:00 a.m., is postponed until March 31, 1942 at 10:00 a.m.; and

(b) He is granted opportunity to make a submission in the nature of an exception to the existing draft of the proposed Board decision on the issue which shall be submitted to the secretary of the Board in quintuple.

2. Board Order 42-63 as amended by Board Order 42-93 is amended to provide that

(a) The secretary of the Board shall transmit to the Brotherhood of Railway and Steamship Clerks copy of the existing draft of the proposed Board decision and copy of the submission of counsel for Duquesne pursuant to paragraph 1(b) hereof; and

(b) The Brotherhood of Railway and Steamship Clerks, or counsel for or representative thereof, shall be allowed to present a reply to such submission.

242 March 7, 1942

Mr. George R. Allen
Asistant General Counsel
The Pennsylvania Railroad Company
Broad Street Station Building
Philadelphia, Pennsylvania

Dear Sir:

Upon your request, transmitted to the Board by Mr. Reed, the Board has extended, from March 10, 1942 until March 31, 1942, at 10:00 a. m., the time for the hearing of oral argument on the issue of the "employer" status of Duquesne Warehouse Company, and has granted you the opportunity to make a submission in the nature of an exception to the existing draft of the proposed Board decision on the issue. While the Board did not set a definite time within which the submission must be received, it understands that it be transmitted as soon as possible and, at any event, no later than March 30, 1942. The Board requests that five copies be submitted.

As the Brotherhood of Railway and Steamship Clerks has evidenced an interest in this matter, it is necessary that they be given opportunity, if they so desire, to submit a reply to your submission. Therefore, if they should request this opportunity and if the submission should not be received in time for the reply to be submitted prior to March 31, 1942, it will be necessary to postpone the hearing of oral argument for a further brief period. It would be appreciated if you would inform the Board as soon as possible the date on which your submission may be expected.

Very truly yours,

JOHN C. DAVIDSON
Secretary of the Board

JCD:f

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March 7, 1942

Mr. Horace A. Bacus, Research Director
Brotherhood of Railway and Steamship Clerks
Room 701, Brotherhood of Railway Clerks Building
Cincinnati, Ohio

In the matter of Duquesne
Warehouse Company
Jurisdictional Docket No. 18

Dear Sir:

Following my telegram of yesterday.

Upon request of Mr. George R. Allen, Counsel for Duquesne Warehouse Company, the hearing of oral argument before the Board on the issue of whether Duquesne is an "employer" under the Railroad Retirement Act has been postponed from March 10, 1942 until March 31, 1942, and Mr. Allen has been granted the opportunity to make a submission in the nature of an exception to the existing draft of a proposed Board decision on the issue.

The Board has directed me to transmit to the Brotherhood copy of the existing draft of the proposed Board decision, which is enclosed, and also, when received, a copy of the submission of Counsel for Duquesne in the nature of an exception thereto. The Board has, of course, directed that the Brotherhood be allowed to present a reply to such submission if it is so desired.

Mr. Allen has been requested to make the submission as soon as possible but, if it is not received in time for the Brotherhood to make a reply before March 31, 1942, and the Brotherhood desires to make a reply, there will be a further postponement of the hearing of oral argument for that purpose. If, prior to the transmittal to you of copy of Mr. Allen's submission, it is possible for you to state whether the Brotherhood will wish to make a reply thereto, it would be appreciated if you would inform the Board accordingly.

Very truly yours,

JOHN C. DAVIDSON
Secretary of the Board

Enclosure
JCD:f

244 DUQUESNE WAREHOUSE COMPANY

Office of the President
Pennsylvania Station,
Pittsburgh, Pa.

March 25, 1942

Re: Duquesne Warehouse Company
Jurisdictional Docket No. 18

Mr. John C. Davidson, Secretary
Railroad Retirement Board
Washington, D. C.

Dear Sir:

In response to your favor of the 7th inst. in this proceeding, and more particularly the concluding paragraph of the same, let me say that on account of the shortness of stenographic services due to war depletion of forces it has not been possible to get our exceptions and brief filed up to this time. I now expect to have them filed on Friday of this week, the 27th inst. It is appreciated that because of this time of filing, the oral argument which is now set for the 31st inst. may be postponed. That will be altogether satisfactory to me. In such event, will you kindly let me know the date of any such postponement.

Very truly yours,

GEORGE R. ALLEN
George R. Allen,
Counsel

gra-h

Broad Street Station Building
Philadelphia, Penna.

245 DUQUESNE WAREHOUSE COMPANY

Office of the President
Pennsylvania Station,
Pittsburgh, Pa.,

March 27, 1942

Re: Duquesne Warehouse Company
Jurisdictional Docket No. 18

Mr. John C. Davidson, Secretary
Railroad Retirement Board
Washington, D. C.

Dear Sir:

Following my letter of the 25th inst., you will find enclosed five copies of exceptions of respondent, Duquesne Warehouse Company, to the proposed decision of the Board. Also you will find enclosed five copies of brief in support of those exceptions and the position in general taken by respondent in this proceeding. Will you kindly acknowledge receipt of the enclosures.

In accordance with my telephone conversation with you this morning, the case is to be submitted on the record as disclosed on page 2 of the enclosed exceptions. That, of course, is in lieu of a hearing. But by all means I wish the case to be argued and to have the opportunity of presenting the argument to the Board. Will you please let me know when a date has been set for the argument and what the date is. By argument I of course mean oral argument.

Very truly yours,

GEORGE R. ALLEN
George R. Allen,
Counsel

gra-h
enc.

Broad Street Station Building
Philadelphia, Penna.

246 RAILROAD RETIREMENT BOARD

In the Matter of Duquesne Warehouse Company } Jurisdictional Docket No. 18

EXCEPTIONS TO THE PROPOSED DECISION OF THE RAILROAD RETIREMENT BOARD

STATEMENT

Upon request of the Railroad Retirement Board Duquesne submitted on 17 February 1939 to the Board responses to its questionnaire on Form LQ-2 (revised). In substitution for those responses and on 15 September 1939, Duquesne filed with the Board its responses to the Board's subsequently reframed questionnaire on Form LQ-2-C adopted by the Board in April, '39. At the same time it filed with the Board the letter of its counsel of the same date and submitted a memorandum of facts and law in support of its position.

At that time there was no hearing before the Board members Eddy and Reed as stated in the Introductory of the proposed decision. Nor has there been any hearing in the case before the Board or anyone delegated by it for such purpose. The occasion referred to in the Introductory was an informal conference, at which were present on 15 September 1939, Board members Eddy and Reed, together with the General Counsel of the Board and counsel for Duquesne. On 14 February 1940, Duquesne submitted to the Board a further statement of facts with a memorandum of law on behalf of Duquesne. On 12 March 1942, counsel for Duquesne submitted to the Board two affidavits, one by H. A. Bietenduefel, Superintendent of Duquesne, and the other by Wilson V. Little, Executive Secretary of the American Warehousemen's Association, Merchandise
247 Division.[1] The aforesaid documents constitute the record in the case, and the case is submitted on that record.

[1] These affidavits were not before the Board at the time of the issuance of the proposed decision, and if because of that any change is desired to be made by the Board in the proposed decision, Duquesne will make any change in these exceptions to meet that situation when and if given the opportunity.

The Foregoing statement is submitted in exception to the Introductory in the proposed decision. Exception is taken more specifically to that part of the Introductory which presents the question at issue as

> "Whether Duquesne, as a company directly and completely owned and controlled by the Pennsylvania Railroad Company,";

While ownership is admitted, control is not more than stock control, and as will be more fully developed hereafter, the record is devoid of any proof that operation of Duquesne is in any way controlled by Pennsylvania. On the contrary, the opposite appears from the facts in the case.

Proposed Findings of Fact

First Finding. Exception is taken to so much of this finding as states that Duquesne was *caused* by Pennsylvania to be incorporated. No where in the record is there support for such a finding.

Exception is further taken to so much of the proposed finding as states that since its incorporation Duquesne has been directly and indirectly completely owned and controlled by Pennsylvania. Ownership of the stock is admitted. But control does not follow. The record shows that Duquesne is engaged in a commercial warehouse business, and that that business is conducted "under the direction of the Superintendent of the Warehouse Company, who has full and unrestricted authority to conduct a commercial warehouse business in accordance with the charter of the company." (Statement of Facts submitted 14 February 1940, p. 6.)

Third Finding. Exception is taken to so much of the third finding as states that "Duquesne's operations are now and have been at least since August 28, 1935 intimately and integrally related to those of Pennsylvania"; and further, to so much of the finding as states that in the storage, loading and unloading, and other handling of goods transported over the lines of Pennsylvania, Duquesne is
248 "in substance an agency of Pennsylvania for such purposes". The record shows that Duquesne is a separate corporation conducting a commercial warehouse business pursuant to its charter; that the receipt, delivery and handling of goods by it are altogether separate from the

services of Pennsylvania; that it is managed and operated by a Superintendent with full authority in the premises. Its dealings are with its patrons who engage its services, and with them are direct. It receives its instructions form them and collects its money from them. Nor is the operation of Duquesne essential to the operation of Pennsylvania. (Statement of Facts of 14 February 1940 pp. 3-6.)

Fourth Finding. Exception is taken to so much of this finding as may be intended to convey the meaning of any special advantage to Pennsylvania. Any industry which is located on the line of a railroad is an advantage to it in that presumably such industry is a shipper or receiver of freight over that line of railroad. Nothing further than that appears in this record as to Duquesne.

Seventh Finding. Exception is taken to this finding in that it fails to state that Duquesne's services at Erie were rendered in precisely the same way as those services are now rendered at East Liberty, and under the same conditions except that the commodity at Erie was newsprint paper and its patron the Pittsburgh Press. Further, exception is taken to this finding in that it fails to state that Duquesne has surrendered its lease of premises at Erie as of 1 May 1941, and now performs no services at Erie and is not in a position to perform any services there.[1]

Eighth Finding. Exception is taken to this language:

> "Duquesne's position as an agency of Pennsylvania, available to provide such facilities and services as the latter requires, appears further from Duquesne's
> 249 handling, reconditioning, and selling for Pennsylvania over freight, damaged refused freight, and damaged unclaimed freight under a contract entered into between the two companies on February 1, 1922."

The right of Pennsylvania to so dispose of such freight is not and cannot be questioned as a legitimate practice. The form of bill of lading under which the freight moves gives Pennsylvania that right—*Re Bills of Lading*, 64 I.C.C. 357, Appendix D, Sec. 4(a). When the freight has been delivered to Duquesne by Pennsylvania the railroad company has entirely severed its connection with the transportation of the property. (Statement of Facts of 15 September 1939, p. 1.) Further, it is not shown that Duquesne has

[1] This last sentence is subject to the footnote under the opening Statement in these exceptions.

ever delivered any of this freight for Pennsylvania, or at the direction of Pennsylvania ever disposed of any which has become worthless. Finally, the finding fails to show, as appears from the affidavit of Mr. Bietenduefel submitted 12 March 1942, that the contract referred to in the finding has been superseded by one dated 2 January 1941.[1]

Ninth Finding. Exception is taken to so much of this finding as reads as follows:

"Duquesne's revenues for the years 1936 through 1938 are indicative of the substantial extent to which it has been engaged in functions and activities connected with Pennsylvania's railroad transportation:"

The record discloses that Duquesne's functions and activities are not in any way connected with railroad transportation but are in commercial storage, a service which Pennsylvania does not perform and is not obligated to perform. The record shows that when the freight has been delivered by Pennsylvania to Duquesne "The Railroad has then completed its transportation". And with respect to outbound freight, it is also true that railroad transportation does not begin until the freight has been delivered into the possession of the Railroad. (Statement of Facts of 14 February, 1940, pp. 3, 5.)

250 *Eleventh Finding.* Exception is taken to this finding in that it fails to find as follows:

Employees of the warehouse company are on the payroll of that company only, and are paid solely out of its funds. They are hired by the warehouse company and discharged by it. They are under no continuing or other authority from the railroad company to supervise and direct the manner of rendition of their services, and never have been. They come under the direction of the Superintendent of the warehouse company, who has full and unrestricted authority to conduct a commercial warehouse business in accordance with the charter of the company. These employees are not accorded free transportation by the railroad; they are not entitled to become members of The Pennsylvania Railroad Voluntary Relief Department, or of The Pennsylvania Railroad Employes Provident and Loan Association: Membership in the Relief De-

[1] This last sentence is subject to the footnote under the opening Statement in these exceptions.

partment is limited to employees or former employees of the railroad company; that in the Provident and Loan Association to employees. They have never been regarded by the railroad company as its employees, nor by the warehouse company as other than employees of that company. (Statement of Facts, 14 February 1940, p. 6.)

Twelfth Finding. Exception is taken to this finding in that it is erroneous, both in whole and as to every detail. It gets no support from the facts in the record. On the contrary, the entire record shows that the operations of Duquesne are in commercial warehouse services—services not performed by Pennsylvania. Duquesne's operations are entirely separate and distinct from those of Pennsylvania. And since this finding is in the nature of a conclusion, it is not possible to cite any particular portion of the several statements of fact in the record. Those statements, both in detail and as a whole, refute the finding.

Thirteenth Finding. Exception is taken to this finding in that it states a conclusion which finds no support from the facts appearing in the record. On the contrary, the entire record shows that the services of Duquesne are performed as to inbound freight after railroad transportation is ended, and as to outbound freight before that has begun. And since this finding is in the nature of a con-
251 clusion, it is not possible to cite particular portions of the several statements of fact. They as a whole refute the finding.

Exceptions to Conclusions of Law

Respondent excepts to the conclusions of law appearing in the proposed decision in that the conclusions there stated are incorrect as matters of law, and further find no support whatever in the facts appearing in the record.

In the place of the findings of fact and conclusions of law submitted in the proposed decision of the Board, the Board should make the following findings of fact and conclusions of law:

Findings of Fact

1. Duquesne is a corporation of the Commonwealth of Pennsylvania. Its business as stated in its charter is "for the purpose of conducting a storage and warehouse business." It does a commercial warehouse business in Pittsburgh, Pa. at two locations—one in Pittsburgh proper and the other at East Liberty in Pittsburgh.[1] It issues warehouse receipts pursuant to the Warehouse Receipts Act of Pennsylvania—Act of 11 March 1909, P.L. 19. Its stock is owned by the Railroad. The record discloses no support for the majority finding that "Duquesne was *caused* by Pennsylvania to be incorporated on August 1, 1906, under the laws of the State of Pennsylvania." (Italics supplied.)

2. Duquesne's operations are confined to two commercial warehouses—one in Pittsburgh proper and the other at East Liberty in Pittsburgh. The two warehouses are owned by the Railroad and leased by it to Duquesne, except that a portion of the space on the ground floor of each warehouse is retained by the Railroad and used by it and officially designated in its tariffs as its freight stations for the general receipt and delivery of freight. The Railroad maintains an agency force at each station. These sta-
252 tions are fully equipped with tracks and other facilities for the receipt, delivery and handling of inbound and outbound freight, both carlot and less; and such service is rendered to the public generally. The operations of each are altogether separate from the operations of Duquesne.

3. Each warehouse has a railroad private siding where delivery is made by the Railroad in carlots to Duquesne. Placement on the siding by the Railroad is complete delivery to Duquesne. Transportation by railroad has then been completed. The owner unloads the cars. On outbound carlot shipments the Railroad places the empty cars on the siding and the owner loads. The Railroad does not come into possession of the property until loading has been completed, shipping instructions have been furnished to the Railroad, and the Railroad has issued its bill of lading in acceptance of the freight. On inbound delivery and outbound shipment of less than carload freight such delivery and acceptance are made and given by the agency of the

[1] It conducts no services in any way relating to passengers.

Railroad at the warehouses. Inbound the owner takes the freight from the Railroad station platform and receipts to the Railroad accordingly. Outbound the owner delivers the freight to the Railroad at the railroad station platform, and the Railroad accepts and issues its bill of lading covering. Transportation by railroad inbound in carlots ends on siding delivery; and on outbound begins upon completion of loading by shipper, furnishing to the Railroad of shipping instructions, and the issuance by the Railroad of its bill of lading. On less than carlot shipments transportation by railroad ends on delivery to the owner at the platform of the station agency, and begins on receipt from the owner at the same point.

4. All carlot shipments delivered to Duquesne by the Railroad and shipped out from Duquesne's warehouses over the railroad are carried by the Railroad at carload rates. As is customary generally with carload freight, and as required by the governing tariff of the Railroad, 253 the owner unloads on inbound and loads on outbound.

The requiring rule is No. 27, Section 1, of the governing tariff, which is Consolidated Freight Classification presently numbered 13; and reading as follows, (there being no exceptions as covered in the rule):

"Loading or Unloading.

"Owners are required to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by rail carriers, carried at CL ratings or rates, except where tariff of carrier at point of origin or destination or stopover station (as the case may be) provides for loading or unloading of CL freight by carrier."

5. After delivery of the freight by the Railroad to Duquesne, both carlot and less, the possession is that of Duquesne and the property is under the exclusive control and direction of Duquesne. A like situation prevails on outbound goods until delivery by Duquesne to the Railroad. During the control and possession by Duquesne, liability, if any, for loss, damage or injury to the property is that of Duquesne. Responsibility of the Railroad as to carlot freight inbound ceases upon delivery on the siding to Duquesne, and on outbound does not arise until receipt from Duquesne of the property loaded into the car and the issu-

ance of the bill of lading. The same applies on less than carload freight at the time of delivery by the Railroad to Duquesne on inbound shipments, and upon receipt from Duquesne of outbound shipments. All services accorded the property by Duquesne, such as loading, unloading, storing, ventilating, drying, moistening, packaging, assembling and distributing, are performed by Duquesne at the direction of the owner; under arrangements made direct by the owner with Duquesne; and charges for such services are made by Duquesne to the owner direct and paid by the owner direct to Duquesne.

6. At its warehouse in Pittsburgh proper, Duquesne conducts a general commercial warehousing business. That business comes to it both by rail and truck, and goes out likewise. About 40% moves out by truck. Speaking of 254 carlot shipments by rail inbound, they are consigned to the owners care of Duquesne. Unloading is performed by Duquesne for the owners. Outbound, carlot loading is performed by Duquesne for the owners. The owners are the shippers and so appear on the bills of lading. In the case of less than carlot shipments, Duquesne takes delivery for the owners at the platform of the railroad station agency, and on outbound shipments delivers for the owners to the Railroad at the same point.

7. At its East Liberty warehouse the only commodity handled by Duquesne is sugar in carlots. The sugar is packaged freight, originates at the eastern seaboard, and reaches Pittsburgh by rail transportation. It is consigned to the shipping sugar company care of Duquesne. Duquesne is used by the owner for storage, warehouse handling and subsequent distribution. Delivery inbound is made by the Railroad, and shipment outbound made by the owner as described in previous findings.

8. The tariff of the Railroad under which sugar and other carlot shipments of the commodities named in the tariff are transported by the Railroad carries a transit provision. That is, sugar and the commodities named in the tariff are transported by the Railroad to Pittsburgh and there delivered to the consignee at the carload rates local to Pittsburgh. If and when subsequently shipped out over the same railroad, the sugar is entitled to the through rate from the initial point of shipment to ultimate destination. The governing tariff of the Railroad, however, contains this express provision:

"While the shipments are stored in transit under these rules their custody and possession as between carrier and the consignee or owner, shall be that of the consignee or owner."

9. The transit provision in the tariff of the Railroad is not particular to any one consignee. It is restricted to
255 commodities and locations, but is open to all receivers and shippers of named commodities at the named points. For instance, transit on sugar is accorded by the Railroad also at Chicago, Detroit, Fort Wayne and Indianapolis; on lumber at Cincinnati, Fort Wayne and Toledo; on dairy products at Cincinnati, Cleveland, Detroit and Indianapolis; on grain at Chicago, Cincinnati, Pittsburgh and St. Louis; on iron and steel at Ambridge, Pa., Chicago and Logansport, Indiana. In addition, at East Liberty the transit provision is applicable also on canned food stuffs.

10. This same sugar arrangement at Pittsburgh has long been availed of by another large sugar refining company located on the eastern seaboard. It makes carlot shipments of sugar to Pittsburgh, consigning the same to another warehouse company. That company has a warehouse located on the line of the Railroad at Pittsburgh, connected with which is a private siding. The sugar of that refinery is shipped from the eastern seaboard to the warehouse company over the line of the Railroad, delivered by the Railroad to the warehouse company on its private siding, handled by the warehouse company while in its possession, and later distributed by the warehouse for the owner at Pittsburgh and throughout surrounding territory. Previous to 1942 much of this sugar was received by that warehouse company from the Railroad, handled by the warehouse company and then shipped out by the warehouse company over the railroad under the transit arrangement in precisely the same way as the sugar of another refinery is handled by Duquesne at its East Liberty warehouse. This arrangement terminated with the year 1941 because of contractual arrangements between the warehouse company and the refining company.

11. During a limited period, Duquesne operated a warehouse at Erie, Pa., where newsprint paper in carlots was stored for the Pittsburgh Press. The facilities were in use August 1937 to 15 May 1938. That was occasioned by an emergency with respect to price conditions on news-

256 print paper. The paper was delivered inbound by the Railroad to Duquesne on private siding of Duquesne, and on outbound movement was received by the Railroad from Duquesne and transported to Pittsburgh where delivery was made to the newspaper. The services of loading, unloading and handling by Duquesne were similar to those with respect to sugar at East Liberty. As of May 1, 1941, the lease of those facilities was terminated and Duquesne now performs no service whatever at Erie, Pa., and is not in a position to do so.

12. Duquesne files no tariffs with the Interstate Commerce Commission or with any public utility commission of any state. Nor is it a party to any tariff, either state or federal, of any common carrier subject to the provisions of Part I of the Interstate Commerce Act.

13. Duquesne sublets parts of its warehouse building at Pittsburgh proper to tenants who conduct their business there. They are chiefly manufacturing concerns or representatives of manufacturers. Duquesne has nothing to do with any shipments delivered to them by the railroad or made by them over the railroad. The Railroad delivers freight to them and receives freight from them in the same manner as freight is delivered to Duquesne by the Railroad and received by the Railroad from Duquesne.

14. Gross revenues of Duquesne for the years 1936-38 were as follows:

Year	Storage and handling of freight under transit provision	Storage and handling of other freight	Sale of Salvaged freight	Subleasing of space to tenants
1936	$59,570.40	$63,011.60	$ 8,599.00	$32,732.00
1937	30,239.93	91,545.99	11,409.00	24,967.00
1938	29,836.01	73,702.99	8,881.86	16,035.17

Of the space in the two warehouses at East Liberty and Pittsburgh proper, the approximate percentage of space devoted to operations with respect to freight coming under the transit arrangement was 30% in 1936, 12.5% in
257 1937, 12.5% in 1938. Total space was used at Erie for the limited period during which that warehouse was in operation. Of the employees of Duquesne engaged in the services with respect to freight coming under the transit provision, the approximate number of employees was 28 in 1936, 14 in 1937, and 14 in 1938. The approximate num-

ber of other employees of Duquesne engaged in general commercial storage in 1936 were 30, in 1937—42, in 1938—42; engaged in the handling of damaged and refused merchandise, 3 in 1936, 1937 and 1938; engaged in the subleasing of space to tenants, 4 in the years 1936, 1937 and 1938.

15. At its warehouse in Pittsburgh proper Duquesne receives from the Railroad over freight and damaged freight which is unclaimed or refused. Upon delivery by the Railroad, Duquesne takes entire possession of the freight, reconditions it where necessary and possible, and sells it at private sale. In case the property proves to be worthless, Duquesne disposes of it as determined by its judgment. Duquesne has never made delivery of any freight for the Railroad. The present contract, effective 2 January 1941, contains no provision for such delivery. For its services Duquesne charges the Railroad 10% of the gross proceeds of sale, with deduction for any necessary expense in reconditioning and handling, and remits the balance to the Railroad. Should the gross proceeds realized at any sale not equal the expenses of Duquesne in handling the freight, plus the 10% commission, Duquesne is credited with the difference. All of the services of Duquesne with respect to this property are altogether after the freight has finished transportation in railroad service, and is a separate and independent transaction.

16. Employees of Duquesne are on the payroll of that company only, and are paid solely out of its funds. They are hired by Duquesne and may be discharged by it only. They come only under the supervision, direction and authority of a Superintendent, who has full and unrestricted authority to conduct a commercial warehouse business
258 in accordance with the charter of the company. These employees are not accorded free transportation by the Railroad and never have been. They are not entitled to become members of The Pennsylvania Railroad Voluntary Relief Department or The Pennsylvania Railroad Employes Provident and Loan Association, organizations in which membership is restricted as to the Relief Department to employees and former employees of the Railroad, and as to the Provident and Loan Association to employees of the Railroad. They have never been regarded by the Railroad as its employees or by Duquesne as other than its em-

ployees. Nor has any organization, board or other body considered them to be employees engaged in railroad transportation service, or sought to have them declared to be such.

17. Duquesne meets the requirements of the Fair Labor Standards Act of 1938. The hours of labor of its employees are regulated accordingly. It is subject to the Pennsylvania Workmen's Compensation Act of 1915, P.L. of 1915, 736, as amended, and pursuant to the terms of that Act provides the required insurance for the payment of compensation to its employees.

18. In the valuation of property of the Railroad by the Interstate Commerce Commission pursuant to Sec. 19a of Part I of the Interstate Commerce Act—22 Valuation Reports, entire volume—these warehouses are not classified as properties of the Railroad used for common carrier purposes.

19. Since 28 August 1935, Duquesne has not been engaged in the non-casual operation of equipment or facilities and the performance of non-casual service, other than trucking service, in connection with the transportation of property by railroad or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

259 CONCLUSIONS OF LAW

Duquesne does not now, nor has it at any time operated any equipment or facility, or performed any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad; and is not now, and has not at any time been an "employer" within the meaning of Section 1 (a) of the Retirement Acts of 1935 or 1937.

A general brief in support of these exceptions and of the position taken by respondent in the proceeding is herewith filed with these exceptions.

Respectfully submitted,
GEORGE R. ALLEN.
Counsel for Respondent
Broad Street Station Building
Philadelphia, Penna.

24 March 1942

260 Apr 2 1942

Mr. George R. Allen, Assistant General Counsel
The Pennsylvania Railroad Company
Legal Department
Philadelphia, Pennsylvania

In the matter of Duquesne Warehouse Company
Jurisdictional Docket No. 18

Dear Sir:

This will acknowledge receipt of your letter of March 12, 1942, submitting two affidavits relevant to this case, and your letter of March 27, 1942, filing five copies each of exceptions to the proposed decision of the Board and a brief in support of the exceptions and the position taken by the Duquesne Warehouse Company in this proceeding.

In accordance with your request, the affidavits enclosed in your letter of March 12, 1942, will be included in the record together with the facts theretofore submitted. As you were advised, the oral argument, which was set for March 31, 1942, was postponed. You will be notified as soon as a new date is fixed.

The Brotherhood of Railway and Steamship Clerks, which is an interested party in the proceeding, will be furnished with copies of the documents submitted by you and will be afforded an opportunity to file, within a reasonable time, any material by way of reply to the materials supplied by you or otherwise pertinent to its view of the case.

Very truly yours,
JOHN C. DAVIDSON
Secretary of the Board

JCD:RB:rr

261 Apr 2 1942

Mr. Horace A. Bacus, Research Director
Brotherhood of Railway and Steamship Clerks
Room 701, Brotherhood of Railway Clerks Building
Cincinnati, Ohio

In the matter of Duquesne Warehouse Company
Jurisdictional Docket No. 18

Dear Sir:

I enclose herewith copies of two affidavits, exceptions to the proposed decision of the Board, and a brief in sup-

port of those exceptions, submitted by Mr. George R. Allen, Assistant General Counsel of The Pennsylvania Railroad Company. I also enclose copies of the letters accompanying those documents. It is regretted that it has been impossible to secure for you copies of Exhibits B and C to the affidavit of Wilson V. Little, described on page 2 of such affidavit. If you desire to examine the copies in the record, I shall be glad to send them to you.

You will note that Mr. Allen is resting his case on the basis of the facts heretofore submitted but wishes to have an opportunity to present oral argument before the Board. As you were advised, the argument, which was set for March 31, 1942, was postponed. You will be notified as soon as a new date is fixed.

You may submit, as soon as possible, any material by way of reply to the material submitted by the Company or otherwise pertinent to an understanding of the case. It is requested that any documents by way of additional evidence be submitted in duplicate and that five copies be furnished of any brief or reply to the Company's exceptions.

Very truly yours,

JOHN C. DAVIDSON,
Secretary of the Board

Enclosures
JCD:RB:rr

262 DUQUESNE WAREHOUSE COMPANY

Office of the President
Pennsylvania Station,
Pittsburgh, Pa.,

April 6, 1942

In the matter of Duquesne Warehouse Company
Jurisdictional Docket No. 18
Mr. John C. Davidson, Secretary
Railroad Retirement Board
Washington, D. C.

Dear Sir:

Thank you for yours of the 2nd inst. relative to this matter. I take it that in the event the Brotherhood of Rail-

way and Steamship Clerks files any material I shall be supplied with a copy of the same.

Very truly yours,

GEORGE R. ALLEN
George R. Allen
Counsel
1740 Broad Street Station Building
Philadelphia, Penna.

gra-h

263 Grand Lodge

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS

Freight Handlers, Express and Station Employes

Brotherhood of Railway Clerks Bldg.
Cincinnati, Ohio

George M. Harrison
Grand President

Cincinnati, Ohio
May 6, 1942

Mr. Richard L. Cooper, Secretary,
Railroad Retirement Board,
Washington, D. C.

In the Matter of Duquesne Warehouse Company—
Jurisdictional Docket No. 18

Dear Sir:

The Brotherhood does not desire to submit any material in this case, it being our feeling that the evidence now before the Board clearly supports the proposed Board decision.

I shall appear for the Brotherhood on oral argument of the matter and shall appreciate your advising me when the date for argument has been set.

Very truly yours,

HORACE A. BACUS
Research Director

264 May 13, 1942

Mr. Horace A. Bacus, Research Director,
Brotherhood of Railway and Steamship Clerks
Room 701, Brotherhood of Railway Clerks Building
Cincinnati, Ohio

In the matter of Duquesne
Warehouse Company
Jurisdictional Docket No. 18

Dear Sir:

Notice is hereby given that the oral argument before the Board on the question of whether Duquesne Warehouse Company is an "employer" under the Railroad Retirement Acts, will be held at the office of the Board, 10th and U Streets, N. W., Washington, D. C., on May 27, 1942, at 10:00 a.m.

By order of the Board:

RICHARD L. COOPER
Secretary of the Board

RLC:f

265 May 13, 1942

Mr. George R. Allen
Assistant General Counsel
The Pennsylvania Railroad Company
Broad Street Station Building
Philadelphia, Pennsylvania

In the matter of Duquesne
Warehouse Company
Jurisdictional Docket No. 18

Dear Sir:

Notice is hereby given that the oral argument before the Board on the question of whether Duquesne Warehouse Company is an "employer" under the Railroad Retirement Acts, will be held at the office of the Board, 10th and U Streets, N. W., Washington, D. C., on May 27, 1942, at 10:00 a.m.

By order of the Board:

RICHARD L. COOPER
Secretary of the Board

RLC:f

266 Feb 1 1943

A&C:RR:1-GS

Duquesne Warehouse Company,
Pennsylvania Station,
Pittsburgh, Pennsylvania.

Attention: Mr. George R. Allen,
Counsel.

Sirs:

Reference is made to your letters dated April 22, June 3, and September 3, 1940, relative to the status of the Company under the Carrier Taxing Act of 1937 and Subchapter B of Chapter 9 of the Internal Revenue Code. The delay in replying to your letters has been occasioned by the extended consideration given to the matter and is regretted.

The information submitted discloses that the Duquesne Warehouse Company is a corporation chartered for the purpose of conducting a storage and warehouse business and that its stock is owned by The Pennsylvania Railroad Company. Its operations are confined to the warehouses, one located at East Liberty, Pennsylvania, and the other at Pittsburgh, Pennsylvania. Both warehouses are owned by the Railroad Company and leased to the Warehouse Company with the exception of a portion of the ground floor of each building which is retained by the Railroad Company and used by such Company as its freight agency. The only commodity handled at the warehouse located at East Liberty, Pennsylvania, is sugar in carload lots which comes in and goes out over the Pennsylvania Railroad. Approximately ninety-five per cent of the commodities handled at the warehouse located at Pittsburgh, Pennsylvania, which commodities are diverse in character and are hauled in both carload and less-than-carload lots, come in over the Pennsylvania Railroad, the remainder coming in by truck. The Pennsylvania Railroad carries about sixty per cent of the outgoing commodities with the remainder being hauled by truck.

Upon the basis of all the information submitted it is the opinion of this office that the Duquesne Warehouse Company is an "employer" within the meaning of the Carriers Taxing Act of 1937 and Subchapter B of Chapter 9 of the Internal Revenue Code since the warehousing services conducted by the company constitute
267 the performance of substantial services in connection with railroad transportation. Accordingly, it is held

that liability for the taxes imposed under the above provisions of law is incurred by the Company with respect to the compensation not in excess of $300.00 per month earned by each of the employees of the Company, including its officers.

Respectfully,
(Signed) GEO. J. SCHOENEMAN
Deputy Commissioner

GS:RMH

268 Feb 27, 1943

Registered Mail
Mr. George R. Allen
Assistant General Counsel
The Pennsylvania Railroad Company
Broad Street Station Building
Philadelphia, Pennsylvania

In the Matter of Duquesne Warehouse Company,
Jurisdictional Docket No. 18

Dear Sir:

Please be advised that the Board, on February 11, 1943, decided that the Duquesne Warehouse Company is an "employer" under the Railroad Retirement Act and that, therefore, service rendered to the company is creditable toward annuities under that Act. You will be furnished with a copy of the Board's decision as soon as it is released.

Very truly yours,
MARY B. LINKINS
Secretary of the Board

269 Feb 27 1943

Registered Mail
George M. Harrison, Grand President
Brotherhood of Railway and Steamship Clerks
Brotherhood of Railway Clerks Building
Cincinnati, Ohio

In the Matter of Duquesne Warehouse Company,
Jurisdictional Docket No. 18

Dear Sir:

Please be advised that the Board, on February 11, 1943, decided that the Duquesne Warehouse Company is an "employer" under the Railroad Retirement Act and that, therefore, service rendered to the company is creditable toward

annuities under that Act. You will be furnished with a copy of the Board's decision as soon as it is released.

Very truly yours,

MARY B. LINKINS
Secretary of the Board

270 Mar 5 1943

Registered Mail

George M. Harrison, Grand President
Brotherhood of Railway and Steamship Clerks
Brotherhood of Railway Clerks Building
Cincinnati, Ohio

In the Matter of Duquesne Warehouse Company,
Jurisdictional Docket No. 18

Dear Sir:

I enclose herewith a copy of the Board's decision in the above entitled proceeding.

Very truly yours,

MARY B. LINKINS
Secretary of the Board

Enclosure

271 Mar 5 1943

Registered Mail

Mr. George R. Allen
Assistant General Counsel
The Pennsylvania Railroad Company
Broad Street Station Building
Philadelphia, Pennsylvania

In the Matter of Duquesne Warehouse Company,
Jurisdictional Docket No. 18

Dear Sir:

I enclose herewith a copy of the Board's decision in the above entitled proceeding.

Very truly yours,

MARY B. LINKINS
Secretary of the Board

Enclosure

272 Mar 5 1943

Hon. Guy T. Helvering
Commissioner of Internal Revenue
Washington, D. C.

In the Matter of Duquesne Warehouse Company,
Jurisdictional Docket No. 18

Dear Sir:

I enclose herewith a copy of the Board's decision in the above-entitled proceeding.

Very truly yours,
MARY B. LINKINS
Secretary of the Board

Enclosure

273 Mar 5 1943

Mr. Oscar M. Powell
Executive Director
Social Security Board
Washington, D. C.

In the Matter of Duquesne Warehouse Company,
Jurisdictional Docket No. 18

Dear Sir:

I enclose herewith a copy of the Board's decision in the above-entitled proceeding.

Very truly yours,
MARY B. LINKINS
Secretary of the Board

Enclosure

274 Mar 5, 1943

Mr. Robert F. Cole
Secretary
National Mediation Board
Washington, D. C.

In the Matter of Duquesne Warehouse Company,
Jurisdictional Docket No. 18

Dear Sir:

I enclose herewith a copy of the Board's decision in the above-entitled proceeding.

Very truly yours,
MARY B. LINKINS
Secretary of the Board

Enclosure

663974 O - 45 - 18

275 Form G-101
(9-36)

FEDERAL SECURITY AGENCY
SOCIAL SECURITY BOARD
1712 G Street NW. 14:CP:C
Washington, D. C.

INTERDEPARTMENT TRANSFER SLIP

Date May 28, 1943

There is herewith transferred to:
Mr. Ludo C. Pickett,
Director, Retirement Claims,
Railroad Retirement Board,
844 Rush Street,
Chicago, Illinois

A 200-586 Certified

A copy of letter addressed to Mr. Elisha H. Craig, 1415 Milan Avenue, Brookline, Pittsburgh, Pennsylvania, account number 159-12-4276, disallowing his claim under Title II of the Social Security Act.

Concerning: It appears from information on file in this office that the wage earner may have been an "employee" as defined in section 1(b) Railroad Retirement Act, 1937.

Which apparently requires your attention.

Writer has been informed of this reference.

(Signature) JOHN J. CORSON,
Director
(Title) Bureau of Old-Age and Survivors Insurance

C.H NAN BF

276 COVERAGE POLICY SECTION

159-12-4276-A
Field Office: Pittsburgh, Pennsylvania
May 6, 1943

Area Office:
Philadelphia, Pennsylvania
Mr. Elisha H. Craig,
1415 Milan Avenue,
Brookline, Pittsburgh, Pennsylvania

Dear Mr. Craig:

This letter refers to your claim for benefits under Title II

of the Social Security Act. Our records show that you are not now entitled to primary insurance benefits.

The Social Security Act provides that a wage earner must be fully insured in order to qualify for benefits. To be fully insured you must have been paid wages of at least $50.00 in each of six calendar quarters since January 1, 1937. Our records show that you have not been paid wages of $50.00 or more in any calendar quarter. When you have the necessary quarters for an insured status, you may then file your application for benefits.

Pay received from *Duquesne Warehouse Company, Pittsburgh*, Pennsylvania, could not be included because employment with this company is not covered by the Social Security Act.

We have been informed by the Railroad Retirement Board 844 North Rush Street, Chicago, Illinois, that services for the Duquesne Warehouse Company are creditable toward annuities under the Railroad Retirement Act and that your claim is being adjudicated under that act. A copy of this letter is being sent to that Board.

If you disagree with this determination, you may request the Bureau of Old-Age and Survivors Insurance to reconsider your claim. Additional evidence is not essential to obtain a reconsideration, but if new evidence is available, it should be submitted. If you prefer, you may request a hearing on your claim before a referee of the Social Security Board. A request for a reconsideration or a hearing should be made promptly, and must be filed within six months of this date.

277 If you have any questions as to your claim or if you wish to request a reconsideration or a hearing, call at or write to the field office at the address given above.

Very truly yours,

JAMES F. TULLY,
Chief, Area Office

cc—Railroad Retirement Board
jsk:yr
207

Note: Application received by the Social Security Board at Pittsburgh, Pennsylvania, on March 2, 1942.

[Affidavit of service omitted in printing]

IN UNITED STATES DISTRICT COURT

MOTION OF BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES AND GEORGE M. HARRISON, PRESIDENT OF SAID BROTHERHOOD, FOR LEAVE TO INTERVENE AS PARTIES DEFENDANT—Filed September 24, 1943

Now come the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, an international labor organization (hereinafter referred to as the "Brotherhood"), and George M. Harrison, President of the said Brotherhood, acting in their own behalf, and in behalf of certain employees of the plaintiff who are members of the said Brotherhood, or are represented by it, and move the Court for leave to intervene herein as parties defendant, to file their answer (a copy of which is tendered to the Court herewith), and to participate fully in all further proceedings herein as parties defendant, and in support of their said motion, represent to the Court as follows, to-wit:

1.

The Brotherhood is an unincorporated association or labor union which numbers among its members substantially all of the employees of the plaintiff. The said Brotherhood is the duly selected and recognized collective bargaining representative of the said employees, and has heretofore negotiated with the plaintiff a collective bargaining agreement governing the working conditions of the said employees.

2.

George M. Harrison is the International President of the said Brotherhood, and appears herein in a representative capacity as such President, and as representative of the employees, members of the said Brotherhood generally, and more particularly as the representative of the employees of the plaintiff.

3.

According to a decision of the defendant Railroad Retirement Board, which was rendered on February 11, 1943, and which is referred to in the complaint, the employees of the plaintiff as entitled to accumulate service toward, and eventually receive certain annuities under a statute of the United States known as the Railroad Retirement Act. As stated in the complaint, it is the purpose of this action to set aside said decision of the said Board. If plaintiff prevails, therefore, the employees of the plaintiff will lose valuable rights under the said Railroad Retirement Act.

4.

The Brotherhood participated actively in said proceedings conducted by the Railroad Retirement Board prior to the issuance of its decision aforesaid, and it and the employees represented by it, and in whose behalf it acts, are the real parties in interest in this case.

5.

The interests of the said employees are fully represented herein by the Brotherhood and by George M. Harrison, President of the Brotherhood.

6.

The sole defendant named in the complaint is the Railroad Retirement Board, which is a government agency having no financial interest in the outcome of this case, and the representative of the interests of the said employees by the said Board may therefore be inadequate for the full protection of such interests.

7.

The answer proposed to be filed by the intervenors herein, which is tendered herewith, presents issues of law and fact which are common to and identical with the issues presented by the complaint of the plaintiff and the answer of the Railroad Retirement Board.

Wherefore, in behalf of themselves, and in behalf of the employees of the plaintiff, all of whose interests these parties fully represent, the moving parties respectfully move

that this Court grant them leave to intervene in this proceeding, to file an answer herein, and to take such part in the further proceedings of this cause as may be necessary and appropriate to protect their interests and the interests of those whom they represent.

FRANK L. MULHOLLAND
Frank L. Mulholland
1041 Nicholas Building
Toledo, Ohio

CLARENCE M. MULHOLLAND
Clarence M. Mulholland
1041 Nicholas Building
Toledo, Ohio

WILLARD H. McEWEN
Willard H. McEwen
1041 Nicholas Building
Toledo, Ohio

Attorneys for Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, and George M. Harrison, President of said Brotherhood.

Duly sworn to by Geo. M. Harrison; jurat omitted in printing.

The undersigned hereby acknowledge receipt of a copy of the above motion, waive service or other and further notice of the filing of the same, and hereby consent that the said motion be granted.

GEO. M. HARRISON
BURLINGHAM, VEEDER, CLARK & HUPPER,
Attorneys for Plaintiff.

JOSEPH H. FREEHILL
Attorney for Defendant, Railroad Retirement Board.

Sworn to before me and subscribed in my presence this *1st* day of *Sept.* 1943.

MAURICE GOLDMAN
Maurice Goldman, Notary Public

My Commission expires Mar 29, 1946

IN UNITED STATES DISTRICT COURT

ANSWER OF BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, AND GEORGE M. HARRISON, PRESIDENT OF SAID BROTHERHOOD, INTERVENING DEFENDANTS

Filed September 24, 1943

Now come the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and George M. Harrison, intervening defendants in the above entitled action, and for their answer to the complaint of the plaintiff say:

First. They deny that this action is one arising under 28 U.S.C. Section 41 (8), but admit all other allegations of the first section of the complaint.

Second. The allegations of the second section of the complaint are admitted, except insofar as they may be construed as alleging that the plaintiff is engaged in no service or is operating no facility in connection with the transportation of property by railroad within the meaning of the Railroad Retirement Act, and to the extent that the said allegations may be so construed, they are denied.

Third. The allegations of the third section of the complaint are admitted with the exception of the last sentence thereof, which is denied.

Fourth. These defendants are without knowledge as to the truth or falsity of the allegations contained in Section Fourth of the complaint, and hence deny the same for want of such knowledge.

Fifth. These defendants are without knowledge as to the truth or falsity of the allegations contained in Section Fifth

of the complaint, and hence deny the same for want of such knowledge.

Sixth. The allegations of the Sixth Section of the complaint are admitted.

Seventh. In answer to Section Seventh of the complaint, these defendants admit that the various exhibits attached to the complaint are true and correct copies of the documents and instruments of which they purport to be copies, and that the originals of the said exhibits form portions of the record of the defendant Railroad Retirement Board in this case.

Further answering Section Seventh, and in particular, the numbered subsections (1) to (6), inclusive, these defendants are advised and so represent to the Court that the statements contained therein constitute the conclusions of the plaintiff as to the legal effect of certain documentary evidence presented to the Railroad Retirement Board, that they are not allegations of fact, and that accordingly they require no answer from these defendants.

Insofar, however, as the statements contained in said subsections (1) to (6) under Section Seventh of the complaint may be held to constitute allegations of fact, these defendants are without knowledge as to the truth or falsity of the allegations of said subsections, and hence deny the same for want of such knowledge, except insofar as the said allegations are in accord with the findings of fact made by the Railroad Retirement Board in the opinion referred to in the complaint. To the extent that the said allegations are so in accord with the said findings, they are admitted.

Eighth. These defendants are without knowledge as to the truth or falsity of the allegations contained in Section Eighth of the complaint, and hence deny the same for want of such knowledge.

Ninth. These defendants deny each and every allegation contained in Section Ninth of the complaint.

Tenth. These defendants deny each and every allegation contained in Section Tenth of the complaint.

WHEREFORE, having fully answered the allegations of the complaint, these defendants pray that the same be denied and dismissed at the plaintiff's costs.

FRANK L. MULHOLLAND
CLARENCE M. MULHOLLAND
WILLARD H. MCEWEN

Duly sworn to by Geo. M. Harrison; jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION OF BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, AND GEORGE M. HARRISON, PRESIDENT OF SAID BROTHERHOOD, FOR LEAVE TO INTERVENE AS PARTIES DEFENDANT, TO FILE THEIR ANSWERS, AND TO PARTICIPATE IN ALL PROCEEDINGS HEREIN—Filed September 24, 1943

Upon the annexed notice of motion of Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, and George M. Harrison, as President of the said Brotherhood, for leave to intervene as parties defendant in this action, and upon the annexed written consent executed by the attorneys for the plaintiff and for the defendant herein, and upon application of Frank L. Mulholland, Esq., Clarence M. Mulholland, Esq., and Willard H. McEwen, Esq., attorneys for Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express &

Station Employees, and George M. Harrison, President of said Brotherhood, Samuel J. Cohen, Esq., of Counsel, it is hereby

Ordered, that the aforesaid motion of Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, and George M. Harrison, as President of said Brotherhood, for leave to intervene as parties defendant in this action, and to participate fully in all proceedings herein as parties defendant, and to file their answer herein, be and the same hereby is granted.

Dated, New York, N. Y., September 24, 1943.

HULBERT
United States District Judge

IN UNITED STATES DISTRICT COURT

[Title omitted.]

PLAINTIFF'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

Filed October 15, 1943

Sirs:

Please take notice that upon the complaint and answers and all proceedings heretofore had herein, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, plaintiff will move this Court at a term appointed for the hearing of motions in Room 506 of the United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on October 19, 1943, at 10:30 a.m., or as soon thereafter as counsel can be heard, for summary judgment in plaintiff's favor for the relief demanded in the complaint on the

ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law, and for such other and further relief as may be just in the premises.

Dated: New York, N. Y., October 6, 1943.

Yours, etc.,

BURLINGHAM, VEEDER, CLARK & HUPPER
Burlingham, Veeder, Clark & Hupper,
Attorneys for Plaintiff,
Office and Post Office Address:
27 William Street,
Borough of Manhattan,
City of New York.

To:

The Honorable Francis Biddle,
Attorney General of the United States,
Washington, D. C.

James B. M. McNally, Esq.,
United States Attorney,
United States Courthouse,
Foley Square,
New York, N. Y.

Joseph H. Freehill, Esq.,
Attorney for defendant,
844 Rush Street,
Chicago, Illinois.

Samuel J. Cohen, Esq.,
Attorney for intervening defendants,
50 E. 42nd Street,
New York, N. Y.

NOTICE OF MOTION OF DEFENDANT RAILROAD RETIREMENT BOARD FOR SUMMARY JUDGMENT

Filed October 18, 1943

Sirs:

Please take notice that on the 29th day of October, 1943, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, at a term appointed for the hearing of motions in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York, the defendant Railroad Retirement Board will move this Court for summary judgment in the defendant's favor dismissing the action, in accordance with Rule 56 of the Rules of Civil Procedure for the District Courts of the United States, on the ground that the complaint and the answer of the defendant Railroad Retirement Board (which includes, as part thereof, a certified copy of the Record before the Railroad Retirement Board in Jurisdictional Docket No. 18, In the Matter of Duquesne Warehouse Company) show that there is no genuine issue as to any material fact and that the defendant Railroad Retirement Board is entitled to judgment as a matter of law.

(Signed) JOSEPH H. FREEHILL
Joseph H. Freehill
General Counsel
Railroad Retirement Board
844 Rush Street
Chicago, Illinois
Attorney for Defendant
Railroad Retirement Board

Chicago, Illinois
October 16, 1943

To:

Burlingham, Veeder, Clark and Hupper,
Attorneys for Plaintiff
27 William Street
New York, New York

Samuel J. Cohen, Esq.
Attorney for Intervening Defendants
50 East 42nd Street
New York, New York

[Affidavit of service omitted in printing]

NOTICE OF MOTION OF INTERVENING DEFENDANTS FOR SUMMARY JUDGMENT

Served October 19, 1943; filing date, July 6, 1944

Sirs:

Please take notice, that upon the pleadings and upon all proceedings heretofore had herein, the defendants, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express & Station Employees, and George M. Harrison, President of said Brotherhood, will move this Court, at a Term appointed for the hearing of motion at the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, on the 29th day of October, 1943, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for summary judgment in the defendants' favor dismissing the action in accordance with Rule 56 of the Rules of Civil Procedure for the District Courts of the United States, on the ground that the pleadings herein show that there is no genuine issue as to any material fact, and that the defendants are entitled to judgment as a matter of law.

Dated, New York, October 18, 1943.

Yours, etc.

FRANK L. MULHOLLAND
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1041 Nicholas Building
Toledo, Ohio

CLARENCE M. MULHOLLAND
Clarence M. Mulholland
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Toledo, Ohio

WILLARD H. McEWEN
Willard H. McEwen
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Toledo, Ohio

Attorneys for Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees, and George M. Harrison, President of said Brotherhood.

SAMUEL J. COHEN
Samuel J. Cohen
50 East 42nd Street
New York, New York

Counsel for defendants above named

To:

Burlingham, Veeder, Clark & Hupper, Esqs.
Attorneys for Plaintiff
27 William Street
New York, New York

Joseph H. Freehill, Esq.
Attorney for Railroad Retirement Board
844 Rush Street
Chicago, Illinois

IN UNITED STATES DISTRICT COURT

BURLINGHAM, VEEDER, CLARK & HUPPER,
Attorneys for Plaintiff,
By George R. Allen
Ray Rood Allen
Herbert Mayhew Lord, of Counsel

JOSEPH H. FREEHILL,
Attorney for Defendant

SAMUEL J. COHEN
FRANK L. MULHOLLAND
CLARENCE M. MULHOLLAND
WILLARD H. MCEWEN
Attorneys for Brotherhood of
Railway & Steamship Clerks, Freight
Handlers, Express and Station Employees.

DECISION AND OPINION

Filed February 29, 1944

GODDARD, District Judge:

The plaintiff and defendant have moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The suit is brought by the plaintiff pursuant to Section 11 of the Railroad Retirement Act, for a review of the Administrative Board's determination that the Duquesne Warehouse Company [hereinafter referred

to as Duquesne] is an "employer" within Section 1(a)* of the Railroad Retirement Act of 1935 and 1937 [hereinafter referred to as the Retirement Act, 45 U.S.C.A. § 228(a)], therefore subject to the provisions of the Act and consequently service rendered to Duquesne from the time of its incorporation on August 1, 1906 to date is creditable toward annuities under the Act. By consent the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and George A. Harrison, President of said Brotherhood, have become intervening defendants.

The plaintiff, Duquesne Warehouse Company, was incorporated under the laws of the Commonwealth of Pennsylvania on August 1, 1906, and chartered for the purposes of conducting a storage and warehouse business. Since that time it has conducted a commercial warehouse business at Pittsburgh, Pennsylvania, in two places—one at East Liberty, and the other in Pittsburgh proper. From August, 1937 to May, 1938 it conducted a warehouse business at Erie, Pennsylvania but solely with respect to news-paper print.

Duquesne's entire stock is owned by Pennsylvania Railroad Company and the officers of Duquesne are also officers of Pennsylvania.

Both warehouses are owned by Pennsylvania Railroad Company and operated by the plaintiff under a lease from Pennsylvania. There are direct railroad siding connections at both East Liberty and Pittsburgh proper; and in the buildings, both at East Liberty and Pittsburgh proper, the Railroad Company maintains its own freight agencies with its separate freight agents for the receipt and delivery of carload freight and less than carload lots. Duquesne issues warehouse receipts and is subject to the Pennsylvania Warehouse Receipts Acts. At the East Liberty warehouse the only commodity handled is sugar; this is an account of

* "Section 1. For the purposes of this Act—

(a) The term 'employer' means any carrier [as defined in sub-section (m) of this section], and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service [except trucking service, casual service, and the casual operation of equipment or facilities] in connection with the transportation of passenger or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling or property transported by railroad. * * *"

the California and Hawaiian Sugar Refining Corporation. The sugar is partly refined in California and partly in New York. That refined in California comes east by ship to one of the eastern ports and then moves by rail to Pittsburgh, which is used as a distributing point. That refined at New York moves by rail to Pittsburgh and from there is subsequently distributed. All sugar, either coming in or going out, is in carload lots.

At the other building in Pittsburgh proper a substantial warehouse business is conducted. The business comes into the warehouse chiefly by rail, approximately ninety five percent. The other is trucked in but not locally. Coming by rail it arrives either in carload lots or less.

In the handling of the sugar and other freight received by the Warehouse for storage, it renders such services as the owner requests; it assorts and repacks the sugar in bags and cartons for distribution to the owners' customers. On outbound shipments the Warehouse receives from the Railroad bills of lading and on inbound shipments it issues warehouse receipts to the owners of the goods, and renders various services at their request for which the owner pays the Warehouse.

The employees of the Warehouse Company and the employees of the Railroad Company are entirely segregated. Employees of the Warehouse Company are on the payroll of that company and are paid by that company; they have never been employees of the Railroad Company; they are not accorded the pass privilege; they are not entitled to become members of the Pennsylvania Voluntary Relief Department, nor may they be members of the Pennsylvania Railroad Provident and Loan Association. Membership in the Voluntary Relief Department is limited to employees or former employees of the railroad; that in the Provident and Loan Association—to employees of the Railroad. The employees of the Warehouse Company are members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and with which Brotherhood the Warehouse Company has a working agreement. The goods, when in the warehouse, are under the sole supervision and control of Duquesne, or the owners of the goods.

Under a separate contract the Railroad delivers to the Warehouse Company freight which is damaged or refused.

In making such delivery to the Warehouse Company the Railroad Company entirely severs its connection with the transportation of the property. The Warehouse Company reconditions such damaged or refused freight and sells it at private sale. For its services it charges ten percent of the gross proceeds of the sale, with deductions for any necessary expense, such as reconditioning, and remits the balance to the Railroad Company.

Duquesne sublets a portion of its space to the public for its own account. The greater portion of Duquesne's income is derived from sources other than the railroad contracts. Duquesne did, and does now, maintain a working agreement with Pennsylvania covering storage in transit privileges. Duquesne was recognized as a member of the Warehouse Industry under the N.R.A. Code. It was also recognized and paid accordingly as a member of the General Social Security Plan and not as a member of the Special Railroad Security System. Duquesne also paid according to State Unemployment Compensation Law. The properties of the Warehouse Company were never classified as carrier properties in the valuation of properties of the Pennsylvania Railroad Company by the Interstate Commerce Commission.

The Railroad Retirement Board [hereinafter referred to as the Board] consists of three members. The determination was made by the majority of the Board, but the third member, Mr. Reed, reached a contrary conclusion and dissented. The majority and the dissenting member made findings of fact and conclusions of law.

The first question to be decided is the scope of the review by this court. Are the findings, as made by the Board, conclusive upon the court if they are based on substantial evidence, and are not arbitrary or capricious?

In all matters delegated to the Board for determination and administration its judgments are final if supported by substantial evidence and free from arbitrary or capricious conduct, as they obviously must be if they are to serve the purpose for which the Board was created. *Utah Copper Co.* v. *Railroad Retirement Board*, 129 Fed. (2nd) 358 (C. C. A. 10), cert. denied 317 U. S. 687.

But a preliminary question arises and that is one of jurisdiction. Is the plaintiff an "employer" as defined by the Retirement Act and subject to the jurisdiction of the Board?

In *Utah Copper Co.* v. *Railroad Retirement Board, supra,* it was held that in the absence of a specific provision in the Act creating the Board, expressly lodging the decision of the jurisdictional question in the Board, its decision, even if supported by competent evidence, is not final and may be independently examined by a court of review, and that as the Railroad Retirement Act is silent on the power of the Board to pass upon the question of jurisdiction, its decision as to jurisdiction is subject to review. Cf. *Shields et al.* v. *Idaho Central Railroad Co.*, 305 U. S. 177; *United States et al.* v. *Idaho, et al.*, 298 U. S. 105; *Crowell* v. *Benson*, 285 U. S. 22; *Wichita R. R. et al.* v. *Public Utilities Comm., et al.*, 260 U. S. 48; *Ellis* v. *Railroad Retirement Board*, 132 Fed. (2nd) 636 (C. C. A. 2).

If the findings of fact which form the basis for the determination that Duquesne is an "employer" within Section 1(a) of the Retirement Act are supported by substantial evidence, it is clear from reading the Act and the Regulations promulgated under the Act that the Board has jurisdiction. Are these findings of fact supported by substantial evidence? It does not seem to me that the record substantiates the finding that Duquesne's operations are, and have been directly, both functionally and economically, related to Pennsylvania's transportation of property by railroad. I think the record rather warrants the findings made in the dissenting decision, which are to the effect that Duquesne has always represented itself as a separate distinct corporate entity, and has conducted its business as such separate corporate entity; nor does the record substantiate the findings that Duquesne is, and has been engaged in the non-casual operation of equipment and facilities, and the performance of non-casual service in connection with Pennsylvania's transportation of property by railroad. The record shows that Duquesne was engaged in these operations for its own corporate benefit.

Included in the essential findings of fact made by the Board are the following, the italicized parts of which are objected to by the plaintiff:

> "3. *Duquesne's operations are now and have been at least since August 28, 1935, intimately and integrally related to Pennsylvania's railroad transportation.* Duquesne has been primarily, principally and predominantly engaged in the storage, loading and unloading,

and other handling of goods transported over the lines of Pennsylvania, *being in substance an agency of Pennsylvania for such purposes.*

This finding is based on the evidence found in the record. [Pages 56-60, 83-86, 87-94, 105-106, 130-135, 165-166, 175-178.]

The Board bases its conclusion that Duquesne was an "employer" within the meaning of Section 1(a) largely upon the information obtained in its first questionnaire [R. 56-60]. Plaintiff urges that the questions in the questionnaire were ambiguous and the answers necessarily were vague and misleading, and this seems to be true particularly of question "6a". Plaintiff does state that it conducts operations in connection with Pennsylvania and in truth it does, but not in the manner indicated in the finding. The Board also based its finding on the Salvage Freight Contract of 1922 [R. 83-86] between Duquesne and Pennsylvania Railroad, but this evidence, if it substantiates any conclusion, supports the conclusion that Duquesne's acts were separate and segregated corporate operations. The Board also relies upon the agreement between Duquesne and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employe. [R. 87-94.] This might be significant were it not the fact that the evidence [R. 46, 107, 134] shows that Duquesne's employees are on the payroll of Duquesne and are under the sole supervision of Duquesne's superintendent; are not permitted free transportation on the Pennsylvania lines; are not entitled to become members of the Pennsylvania Railroad Voluntary Relief Department, or the Pennsylvania Employees Provident and Loan Association. These latter facts outweigh any inference to be drawn from the Brotherhood agreement. The Board further based its finding on the memorandum submitted by Duquesne in support of its position [R. 130-135] in which there is a recital of Duquesne's operations. But this does not show Duquesne's operations to be interwoven with Pennsylvania's. It rather tends to establish that Duquesne and Pennsylvania have always held themselves out as separate and distinct corporate entities and have conducted their affairs in that manner.

The facts which lead to this later conclusion are many, but to mention a few referred to in that memorandum: There is the establishment of Pennsylvania's segregated

freight agencies; Duquesne's and Pennsylvania's adherence to the loading and unloading requirements; the interchange of bills of lading and warehouse receipts; the fact that Duquesne or the owners have the sole control of the goods while the goods are in storage; and Duquesne's individual practice of subletting space to customers. Another element upon which the Board based its finding is two bills of lading [R. 165-166]. But the mere fact that a warehouse company affords storage in transit privileges does not lead to the conclusion that such warehouse is "intimately and integrally" related to the carrier, nor does the existence of the present Salvage Contract [R. 175-178] between Duquesne and Pennsylvania support such a finding. It shows a contractual relation.

In my opinion this finding No. 3 is not supported by substantial evidence.

> "4. *The two warehouses operated by Duquesne—one in Pittsburgh proper and the other at East Liberty in Pittsburgh—have been valuable links in the chain of Pennsylvania's railroad transportation.* They are owned by Pennsylvania and are operated by Duquesne under the lease from Pennsylvania. A portion of the ground floor of each warehouse is retained by Pennsylvania and used and officially designated by it as its 'freight agency'. Duquesne's warehouse, as well as Pennsylvania's 'freight agencies', are served by Pennsylvania's railroad tracks, and are equipped with platforms or sidings and other facilities for the receipt, delivery, and other handling of inbound and outbound freight."

The only evidence in the record to support this finding, consists of the two bills of lading [R. 155-156] and the "Transit in storage Rules" [R. 167]. There is no substantial evidence to justify this finding, which seems quite speculative.

> "7. *Duquesne also performed, during the period between August 1937 and May 1938 unloading, storing, and reloading services and other transit details at Erie, Pennsylvania, in connection with carload shipments of news-paper print entitled to storage-in-transit privileges under Pennsylvania's tariffs. These services were similar to those performed by Duquesne at East Liberty.*"

The plaintiff objects to the linking of "other transit details" with "in connection with". The objection is without merit.

"8. *Duquesne's position as an agency of Pennsylvania, available to provide such facilities and services as the latter requires, appears further from* Duquesne's handling, reconditioning, and selling for Pennsylvania, over freight, damaged refused freight, and damaged unclaimed freight under a contract originally entered into between the two companies on February 1, 1922, and superseded by a contract dated January 2, 1941. Pennsylvania transports to Pittsburgh any freight it desires to be disposed of by Duquesne and Duquesne removes such freight to its warehouse after the payment to Pennsylvania of all freight and other charges that may have accrued thereon. Out of the gross proceeds realized by it from each sale, Duquesne deducts a commission of 10 percent and any amounts paid by it for reconditioning, drayage, freight, and other charges, and turns the balance over to Pennsylvania. In the event that the gross proceeds of the sale of freight do not equal the expenses incurred by Duquesne, plus the 10 percent commission, Duquesne is credited with the difference. When any freight is returned by Duquesne to Pennsylvania upon the latter's order, Duquesne is reimbursed only for the actual expenses incurred by it plus storage charges. Under the original contract, if any lot of freight became so worthless as to be unsalable, Duquesne was required to dispose of it as directed by Pennsylvania. Under the new contract, Duquesne is given authority to dispose of such goods as it sees fit. The original contract also provided that if the owner of any unclaimed freight is ascertained prior to the sale of such freight, Duquesne was to deliver such freight, upon instructions from Pennsylvania, to the owner, and was to receive from the owner such charges as Duquesne has paid to Pennsylvania. The new contract provides that under such circumstances Duquesne shall, upon Pennsylvania's request, return such freight to Pennsylvania upon repayment of all charges thereon which Duquesne shall have paid to Pennsylvania."

Such a comprehensive finding that Duquesne is an "agency of Pennsylvania" and is "available to provide such facilities and services as the latter requires" is not warranted. The facts merely show the existence of a contractual agency for specifically agreed and limited purposes. The figures show that some 40 percent for 1936, 26 percent for 1937, 30 percent for 1938 of Duquesne's income was derived from various working agreements with Pennsylvania; they do show the "substantial extent" of Duquesne's source of income and that the income is "connected with" in a certain degree, to the transportation of goods by the Pennsylvania Railroad. However, the greater portion of Duquesne's income is derived from sources other than the Pennsylvania Railroad. Since the phrase "in connection with", as used in the Act, is limited to a specific meaning, the wording of this finding may well lead to a misconception of the true relationship of Duquesne's entire income to that portion derived from the business received from Pennsylvania Railroad Company, and I think plaintiff's objection is merited.

"13. *Duquesne's operations are, and have been at least since August 28, 1935 directly related, functionally and economically, to the performance of the transportation obligations which Pennsylvania has undertaken as a common carrier by railroad, and to the receipt, delivery, transfer in transit, storage, and handling of property transported by Pennsylvania railroad.*"

The effect of this finding is to make Duquesne a department in the Pennsylvania transportation system which is not warranted by the evidence in the record. Duquesne has always conducted itself as a separate distinct corporate entity. Duquesne's employees perform services solely for Duquesne and there is no interweaving of the services of the employees of Duquesne and those of Pennsylvania; they are on entirely different payrolls. Duquesne's employees are and have been recognized solely as employees of a warehouse and hence have never been granted the privileges that Pennsylvania's employees may have had. Duquesne was recognized as a member of the Warehouse Industry under the N.R.A. Code. Duquesne was recognized and paid accordingly, as a member of the General Social Security Plan and not as a member of the Special Railroad Security

System. It is true that Duquesne had working agreements with Pennsylvania and as a result realized a profitable income. In this way Duquesne's operations, in a limited degree, are directly related, functionally and economically, to Pennsylvania's transportation obligations. Such relationship, however, is only a result of contractual agreements, and not because of any functional and economical interweaving by Duquesne and Pennsylvania. The conclusion in this finding is not supported by the evidence.

"14. *Duquesne is, and has been at least since August 28, 1935, engaged in the non-casual operation of equipment and facilities and the performance of non-casual service in connection with Pennsylvania's transportation of property by railroad, other than trucking service, and the receipt, delivery, transfer in transit, storage, and handling of property transported by Pennsylvania by railroad.*".

From an analysis of the previous findings, it appears that there is no substantial evidence to support this finding.

The language of the Carriers Taxing Act of 1937, 45 U.S.C.A. § 261, et seq. in defining "employer" is identical with the language in the definition of "employer" in the Railroad Retirement Act, and it has been held to be a companion statute of the Railroad Retirement Act. *Railroad Retirement Board* v. *Alton*, 295 U. S. 330; *State of California* v. *Anglin*, 129 Fed. (2d) 455 (C. C. A. 9); *Allen* v. *Ocean S. S. Co. of Savannah*, 123 Fed. (2nd) 469 (C. C. A. 5). It has also been held that the administrator of the Carriers Taxing Act is without jurisdiction unless it be found that the company is an express company, sleeping car company, or carrier by railroad subject to Part I of the Interstate Commerce Act—no contention is made that Duquesne is any of these; or that it is a "company which is directly or indirectly owned or controlled by one or more of such carriers [subject to Part I of the Interstate Commerce Act] or under common control therewith, *and* "which operates any equipment or facility or performs any service * * * in connection with the transportation of passengers or property by railroad * * *". The requirements of the alternative conditions, namely control *and* operation in connection with the transportation of persons or property by railroad, are conjunctive and unless the company falls within both requirements, the administrative agency lacks

jurisdiction. *Walling* v. *Baltimore Steam Packet Co.*, 50 Fed. Supp. 639, 642. Cf. *Crowell* v. *Benson*, 285 U. S. 22; *Wichita R. R. et al.* v. *Public Utilities Comm. et al.*, 260 U. S. 58; *Louisville & Nashville R. R. Co.* v. *Finn, et al.*, 235 U. S. 601. It is conceded that Duquesne fulfills the requirement of control. However, since the finding that Duquesne "operates any equipment or facility or performs any service * * * in connection with the transportation of passengers or property by railroad" is not supported by the substantial evidence, Duquesne does not come within the requirements of an "employer" as defined by Section 1(a) of the Retirement Act; therefore it necessarily follows that the Retirement Board is without jurisdiction for one of the jurisdictional requirements of the Act is lacking.

Accordingly the plaintiff's motion for summary judgment is granted, and the motion of the defendant is denied.

Settle order on notice.

February 29, 1944.

(Sgd) HENRY W. GODDARD
U.S.D.J.

IN UNITED STATES DISTRICT COURT

JUDGMENT

Entered March 20, 1944

This action having been commenced by the filing of the complaint herein on May 18, 1943, and the defendant, Railroad Retirement Board, having filed its answer herein on July 21, 1943, and the Brotherhood of Railway and Steamship Clerks, Freight, Handlers, Express & Station Employees, and George M. Harrison, President of said Brotherhood, having intervened herein as defendants pursuant to order filed herein on September 24, 1943, and the plaintiff having moved this Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment setting aside and in all respects annulling the action of the Railroad Retirement Board as set forth in its decision made and filed on February 11, 1943, on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law; and the defendants having moved this Court pursuant to the afore-

said Rule 56 for summary judgment dismissing the complaint herein;

And said motions having duly come on to be heard before Honorable Henry W. Goodard, District Judge, on October 29, 1943, and due consideration having been had thereon, and the Court having filed its opinion herein on February 29, 1944, granting plaintiff's motion for summary judgment and denying defendants' motions for summary judgment; and the costs of the plaintiff having been duly taxed by the Clerk of this Court at the sum of $27.11;

Now on motion of Burlingham, Veeder, Clark & Hupper, attorneys for plaintiff, it is

Ordered that the motions made by the defendant and the intervening defendants for summary judgment be, and the same hereby are, denied; and it is further

Ordered that the plaintiff's motion for summary judgment be, and the same hereby is, granted and that the action and decision of the Railroad Retirement Board, as set forth in its decision made and filed on February 11, 1943, be and the same hereby is set aside and annulled; and it is further

Ordered and adjudged that the plaintiff, Duquesne Warehouse Company, having an office at Pittsburgh, Pennsylvania, have judgment on the issues herein on the merits against the defendant, Railroad Retirement Board, having its principal office at 844 Rush Street, Chicago, Illinois, and against the intervening defendants, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express & Station Employees, and George M. Harrison, President of said Brotherhood, having an office at Court and Vine Streets, Cincinnati, Ohio; and that said plaintiff recover of and from the intervening defendants aforesaid, jointly and severally, the sum of $27.11, its costs as taxed herein by the Clerk and that plaintiff have execution therefor.

Approved:

(Signed) HENRY W. GODDARD
U. S. D. J.

Judgment rendered this 20th day of March 1944.

(Signed) GEORGE J. H. FOILMER
Clerk of the United States District Court
for the Southern District of New York

NOTICE OF APPEAL OF DEFENDANT RAILROAD RETIREMENT BOARD

Filed June 14, 1944

Notice is hereby given that the Railroad Retirement Board, the defendant above-named, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the final judgment entered in this action on March 20, 1944.

Dated: June 10, 1944.

(Signed) JOSEPH H. FREEHILL
Joseph H. Freehill
General Counsel
And Attorney for Defendant
Railroad Retirement Board
844 Rush Street
Chicago 11, Illinois

To: BURLINGHAM, VEEBER, CLARK AND HUPPER
Attorneys for Plaintiff
27 William Street
New York 5, New York

MULHOLLAND, ROBIE AND MCEWEN
Attorneys for Intervening Defendants
Suite 1041 Nicholas Building
Toledo 4, Ohio
and

SAMUEL J. COHEN, ESQ.
Of Counsel
50 East 42nd Street
New York, New York

NOTICE OF APPEAL OF INTERVENING DEFENDANTS

Filed June 20, 1944.

Notice is hereby given that the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, and George M. Harrison, President of said Brotherhood, intervening defendants above-named, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the final judgment entered in this action on March 20, 1944.

Dated: June 17, 1944.

WILLARD H. MCEWEN
/s/ WILLARD H. MCEWEN
Willard H. McEwen,
1041 Nicholas Building,
Toledo, Ohio.

SAMUEL J. COHEN
/s/ SAMUEL J. COHEN
Samuel J. Cohen,
50 East 42nd Street,
New York, New York
Attorneys for Intervening Defendants

To: BURLINGHAM, VERDER, CLARK AND HUPPER
Attorneys for Plaintiff,
27 William Street
New York 5, New York

JOSEPH H. FREEHILL,
General Counsel and
Attorney for Defendant
Railroad Retirement Board
844 Rush Street
Chicago 11, Illinois

STIPULATION AS TO CONTENTS OF RECORD ON APPEAL

Filed July 8, 1944

It is hereby stipulated and agreed by and between the parties hereto that the record on appeal herein shall consist of the following items:

1. Summons and complaint, omitting, however, Exhibits 1-15, inclusive, of the complaint.

2. Answer of defendant Railroad Retirement Board, with certified copy of Record before Railroad Retirement Board In Jurisdictional Docket No. 18—In The Matter of Duquesne Warehouse Company.

3. Motion of Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and George M. Harrison, President of Said Brotherhood, For Leave To Intervene As Parties Defendant.

4. Answer of Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and George M. Harrison, President of Said Brotherhood, Intervening Defendants.

5. Order granting motion of Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and George M. Harrison, President of said Brotherhood, for leave to intervene as parties defendant, to file their answer, and to participate in all proceedings herein.

6. Plaintiff's notice of motion for summary judgment.

7. Notice of motion of defendant Railroad Retirement Board for summary judgment.

8. Notice of motion of intervening de. ndants for summary judgment.

9. Decision and opinion of Honorable Henry W. Goddard, District Judge.

10. Final judgment entered March 20, 1944.

11. Notice of appeal of defendant Railroad Retirement Board.

12. Notice of appeal of intervening defendants.
13. Stipulation as to contents of record on appeal.

Dated: 6/28 1944

(Signed) JOSEPH H. FREEHILL
Joseph H. Freehill
General Counsel and
Attorney for Defendant-
Appellant
Railroad Retirement Board
844 Rush Street
Chicago 11, Illinois

(Signed) WILLARD H. MCEWEN
Willard H. McEwen
1041 Nicholas Building
Toledo, Ohio

(Signed) SAMUEL J. COHEN
Samuel J. Cohen
50 East 42nd Street
New York, New York
Attorneys for Intervening Defendants-
Appellants

(Signed) BURLINGHAM, VEEDER, CLARK AND HUPPER
Burlingham, Veeder, Clark and Hupper
Attorneys for Plaintiff-Appellee
27 William Street
New York 5, New York

IN UNITED STATES DISTRICT COURT

MOTION FOR ORDER EXTENDING TIME FOR SERVING, CERTIFYING, AND FILING RECORD ON APPEAL AND DOCKETING ACTION

Filed July 14, 1944

Comes now the defendant-appellant Railroad Retirement Board, by its attorney, Joseph H. Freehill, General Counsel of the Board, and moves the Court for an order extending the last date for serving a copy of the record on appeal

upon the plaintiff-appellee Duquesne Warehouse Company, as required by Rule 31 of the Court's Civil Rules, from July 14, 1944 to August 14, 1944; extending the last date for filing copies of the appellate record with the Clerk of the Court and certification by him of a copy, as provided in the aforementioned Rule 31, to the tenth day following service of the record copy upon the plaintiff-appellee, if there is no motion to correct, or, if there is a motion to correct, to the fifth day following the order thereon; and extending the last date for filing the record on appeal and docketing the action in the United States Circuit Court of Appeals for the Second Circuit, in accordance with Rule 73(g) of the Rules of Civil Procedure for the District Courts of the United States, from July 24, 1944 to August 24, 1944.

(Signed) JOSEPH H. FREEHILL
Joseph H. Freehill
General Counsel and
Attorney for Defendant-Appellant
Railroad Retirement Board
844 Rush Street
Chicago 11, Illinois

We hereby consent to the granting of the above motion:

(Signed) BURLINGHAM, VEEDER, CLARK AND HUPPER
Burlingham, Veeder, Clark and Hupper
Attorneys for Plaintiff-Appellee
27 William Street
New York 5, New York

(Signed) WILLARD H. MCEWEN
Willard H. McEwen
1041 Nicholas Building
Toledo, Ohio

(Signed) SAMUEL J. COHEN
Samuel J. Cohen
50 East 42nd Street
New York, New York
Attorneys for Intervening Defendants-Appellants

Dated: July 13, 1944

ORDER EXTENDING TIME FOR SERVING, CERTIFYING, AND FILING RECORD ON APPEAL AND DOCKETING ACTION

Entered July 15, 1944

The defendant-appellant Railroad Retirement Board, by its attorney, has brought a motion for an order extending the last dates for serving a copy of the record on appeal upon the plaintiff-appellee Duquesne Warehouse Company, for filing copies of the appellate record with the Clerk of the Court and certification by him of a copy, and for filing the record on appeal and docketing the action in the United States Circuit Court of Appeals for the Second Circuit; the attorneys for the plaintiff-appellee and the attorneys for the intervening defendants-appellants have consented to the granting of the motion. Upon consideration thereof, it is this 15th day of July, 1944, ordered as follows:

That the last date for serving a copy of the record on appeal upon the plaintiff-appellee be and the same hereby is extended from July 14, 1944 to August 14, 1944;

That the last date for filing copies of the appellate record with the Clerk of the Court and certification by him of a copy be and the same hereby is extended to the tenth day following service of the record copy upon the plaintiff-appellee, if there is no motion to correct, or, if there is a motion to correct, to the fifth day following the order thereon; and

That the last date for filing the record on appeal and docketing the action in the United States Circuit Court of Appeals for the Second Circuit be and the same hereby is extended from July 24, 1944 to August 24, 1944.

(Signed) WILLIAM BONDY
Judge of the United States District Court
for the Southern District of New York

[Title omitted]

STIPULATION AS TO RECORD

It is hereby stipulated and agreed by and between the parties hereto that the foregoing is a true transcript of the record of the District Court in the above-entitled matter as agreed upon by the parties.

JOSEPH H. FREEHILL
General Counsel and
Attorney for Defendant-
Appellant
Railroad Retirement Board
844 Rush Street
Chicago 11, Illinois

WILLARD H. MCEWEN
1041 Nicholas Building
Toledo, Ohio

SAMUEL J. COHEN
50 East 42nd Street
New York, New York
Attorneys for Intervening De-
fendants-Appellants

BURLINGHAM, VEEDER, CLARK AND HUPPEL
Attorneys for Plaintiff-Appellee
27 William Street
New York 5, New York

[Clerk's Certificate to foregoing transcript omitted in printing]

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 138—October Term, 1944

(Argued January 8, 1945—Decided March 12, 1945)

DUQUESNE WAREHOUSE COMPANY, PLAINTIFF-APPELLEE

vs.

RAILROAD RETIREMENT BOARD, DEFENDANT-APPELLANT

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES, AND GEORGE M. HARRISON, PRESIDENT OF SAID BROTHERHOOD, INTERVENING DEFENDANTS-APPELLANTS

Before CHASE, HUTCHESON, and FRANK, Circuit Judges

On Appeal from the District Court of the United States for the Southern District of New York

Joseph H. Freehill and Myles F. Gibbons, General Counsel, David B. Schreiber, Ass't General Counsel, Railroad Retirement Board (Jacob Abramson and Louis Turner of counsel) for Appellant.

Burlingham, Veeder, Clark & Hupper (George R. Allen, Ray Rood Allen, Herbert Mayhew Lord, of counsel) for Appellee.

Mulholland, Robie and McEwen (William H. McEwen, Samuel J. Cohen, Frank L. Mulholland and Clarence M. Mulholland, of Counsel) for Intervening Appellants.

OPINION.

HUTCHESON, Circuit Judge:

Brought under Section 11 [1] of the Railroad Retirement Act of 1937, [2] the suit was to set aside an order of the Railroad Retirement Board [3] that plaintiff within the definition [4] of the Act was an

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[1] 45 U. S. C. A. Sec. 228k. "Court Jurisdiction.—An employee or other person aggrieved may apply to the district court of any district wherein the Board may have established an office or to the District Court of the United States for the District of Columbia to compel the Board (1) to set aside an action or decision of the Board claimed to be in violation of a legal right of the applicant or (2) to take action or to make a decision necessary for the enforcement of a legal right of the applicant. Such court shall have jurisdiction to entertain such application and to grant appropriate relief. The decision of the Board with respect to an annuity, pension, or death benefit shall not be subject to review by any court unless suit is commenced within one year after the decision shall have been entered upon the records of the Board and communicated to the person claiming the annuity, pension, or death benefit."

[2] 45 U. S. C. A. Sec. 228 (a) et seq.

[3] 45 U. S. C. A. Sec. 228j.

[4] 45 U. S. C. A. Sec. 228a Definitions:

"For the purposes of sections 228a–228r of this title—(a) The term 'employer' means any carrier (as defined in subsection (m) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage or handling of property transported by railroad, * * *"

employer. The claim was that the undisputed facts[*] establish as matter of law that plaintiff is not an employer as that term is defined by statute and that the Board's decision and order that it is not in accordance with law. On the Board's motion for summary judgment made on the complaint, the answer and the record made before it, there was a judgment for plaintiff ordering the action and decision of the board set aside and annulled. The Board has appealed.

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[*] So far as material, these are the facts:

(1) Though most of its principal officers are also officers of Pennsylvania, and its stock is, and has been, entirely owned by Pennsylvania, Duquesne is in no sense a department of Pennsylvania, but it is, and always has been, conducted as a separate corporate entity, and entirely separate from and independent of Pennsylvania.

(2) A public warehouse chartered to conduct a general storage and warehouse business, services which Penn. is not obligated to, and does not perform, it is engaged solely in the commercial warehouse business at Pittsburgh and East Liberty, Pa., and though a large part of its business consists in the warehousing, the loading, unloading, and other handling incident thereto, of goods which have been, or are to be, transported over the Pennsylvania lines, it is not a carrier, nor is it engaged at all in railroading. (3) Its business is conducted under the direction of its superintendent who has full and unrestricted authority to conduct a commercial warehouse business under its charter, and its facilities are available to, and are employed by, the public generally without restrictions to goods shipped over Penn. lines. (4) Its employees are employed by it, carried on its payroll, paid solely out of its funds, and discharged by it alone. Penn. has no authority over them and nothing whatever to do with them. They are not, they have not regarded themselves, and have never been regarded by the railroad company as, its employees. They are Duquesne's employees only. (5) The two warehouses operated by Duquesne at East Liberty and Pittsburgh, are owned by Penn., being operated by Duquesne under lease from Penn. A portion of the ground floor of each warehouse is retained by Penn. and used and officially designated by it as its 'freight agency'. Duquesne's warehouses, as well as Pennsylvania's "freight agencies', are served by Pennsylvania's railroad tracts and are equipped with platforms or sidings and other facilities for the receipt, delivery, and other handling of inbound and outbound freight.

(6) At the East Liberty warehouse, Duquesne handles and stores only one commodity, carload sugar, which comes in and goes out over Pennsylvania rails. The sugar is handled by Duquesne under storage-in-transit privileges permitted and covered by railroad tariffs filed by Pennsylvania with the Interstate Commerce Commission. Part of the sugar which passes through Duquesne's warehouse is refined in California and part in New York. That refined in California is moved by ship to one of the eastern ports, such as Philadelphia or Baltimore, and thence by rail to Pittsburgh; and that refined in New York is shipped by rail directly from New York to Pittsburgh. At Duquesne's warehouse, which is used as a distribution center, the packages of sugar are assembled in the proper numbers and sizes and then shipped out over Pennsylvania's lines for distribution. Incoming shipments are consigned to the owner care of Duquesne, the route being designated as 'Penn R. R. For Stge in Transit'; and outgoing shipments are consigned to the owner, the bill of lading having a transit record number and being marked 'accorded transit privilege at East Liberty, Pa.' Both the unloading of the sugar from, and its reloading into, Pennsylvania cars are performed by Duquesne at the latter's siding for the account of the shipper in accordance with the governing rail tariff (Consolidated Freight Classification No. 13) requiring owners to load and unload freight carried at carloading rates. In the case of incoming sugar, delivery is made by Penn. and receipt is taken by Duquesne when Penn. places the cars on Duquesne's siding, and Duquesne then unloads. In the case of outgoing shipments, the empty cars are placed by Pennsylvania on Duquesne's siding and loaded by Duquesne, which then receives Pennsylvania's bill of lading. The handling and storage charges are billed by Duquesne directly against the owners of the property and are paid by such owners.

(7) At its Pittsburgh warehouse, Duquesne is primarily, principally and predominantly engaged in the handling of freight which has come in, or is destined for movement, over Pennsylvania's rails, or which has both come in and is going out over Pennsylvania's rails. Approximately 95 percent of the commodities handled at that place, which commodities are diverse in character and are hauled in both carload and less-than-carload form, come in by rail, the remainder coming in by truck. The respective rail and truck percentages of the outgoing commodities are 60 and 40. The services performed by Duquesne at the Pittsburgh warehouse are similar to those at East Liberty insofar as carload freight is concerned, except that no sugar is handled. As to the less-than-carload freight, Duquesne, in addition to doing it, performs the handling involved in delivering it to and receiving it from Pennsylvania's platform. The loading and unloading of less-than-carload freight is performed by Penn. at its platform. In the case of incoming less-than-carload shipments, the freight is unloaded by Penn. from the cars to its platform and is delivered to and received by Duquesne on such platform. In the case of outgoing less-than-carload shipments, Duquesne delivers the freight unto Pennsylvania's platform. Penn. then issues its bill of lading, loads the freight into the cars, and moves them out. Of the total space used by Duquesne at its warehouses at East Liberty

While we agree with the Board that the case presents no genuine issue as to any material fact, we cannot agree that these facts demanded a judgment in its favor. Indeed, we think it plain that they demanded a judgment for plaintiff. The facts on which Board and Court based their exactly opposite conclusions of law were furnished entirely by plaintiff in response (a) to the Board's questionnaire which formed the basis of the opinion originally issued by the Board's general counsel, and later adhered to by two members of the Board, that plaintiff is an employer; (b) plaintiff's additional memorandum filed with the Board September 15, 1939, and (c) its statement of facts filed February 14, 1940. These, without contradiction or inconsistency of any kind, establish that Duquesne is not a carrier but a commercial warehouseman, that it does not perform any transportation service of any kind, that the services it performs are not services which Pennsylvania, as a carrier, is obligated or has contracted to perform, and that, though Pennsylvania owns all of its stock, it is operated not as a department of Penn., but as a distinct corporate entity entirely and completely independent of Pennsylvania. It is conceded that but for the fact that Penn. owns its stock, there would not, there could not, be any claim made that the service Duquesne performs brings it within the statutory definition of "employer." The dispute between it and the Board turns on whether it operates its two warehouses "in connection with the transportation of * * * property by railroad or in receiving, delivery, storage, or handling of property transported by railroad." It is not disputed that, though it does a general commercial warehouse business, without restriction to goods which have moved or will move on the Pennsylvania lines, the major part of the goods handled by Duquesne have been, or are to be, transported on those lines, and that its operations are convenient and beneficial to the railroad and its patrons. Neither is it disputed that what Duquesne does is in discharge of its own obligations and not at all of any obligation imposed upon, or assumed by the carrier. It thus appears that the point of difference between Duquesne and the Board is that the

and Pittsburgh, approximately 30 percent was devoted to the handling of freight accorded storage-in-transit privileges in 1936; approximately 12.5 percent in 1937; and approximately 13.5 percent in 1938.

(8) Duquesne handles, reconditions and sells for Penn. over freight, damaged refused freight, and damaged unclaimed freight under a contract entered into between the two companies on Feb. 1, 1922. Pursuant to this contract Penn. transports to Pittsburgh any freight it desires to be disposed of by Duquesne and Duquesne removes such freight to its warehouse after the payment to Penn. of all freight and other charges that may have accrued thereon. Out of the gross proceeds realized by it from each sale, Duquesne deducts a commission of ten percent and any amounts paid by it for reconditioning, drayage, freight and other charges and turns the balance over to Pennsylvania. If the owner of any unclaimed freight is ascertained prior to the sale of such freight, Duquesne delivers such freight, upon instructions from Pennsylvania, to the owner and receives from the owner such charges as Duquesne has paid to Pennsylvania. In the event that the gross proceeds of the sale of freight do not equal the expenses incurred by Duquesne, plus the ten percent commission, Duquesne is credited with the difference. If any lot of freight becomes so worthless as to be unsalable, Duquesne disposes of it in such manner as Penn. directs. When any freight is returned by Duquesne to Penn. upon the latter's order, Duquesne is reimbursed only for the actual expenses incurred by it.

Board insists that though Duquesne, the warehouseman, operates entirely independently and not as a department of Penn., the statute is satisfied by proof, that its operations are availed of by Penn.'s customers, that they are concerned largely with goods which have been, or will be, transported, and that it is an advantage to Penn. to have a warehouse conveniently located with reference to its lines, while Duquesne insists that the statute is satisfied only when the storage, etc. is done by or for the carrier in discharge of the carrier's obligations. Coming more pointedly to it, Duquesne insists that the words of the statute, "in connection with the transportation of property by railroad or the receipt, delivery, etc., of property transported by railroad" required that the acts, which the statute sets out as definitive, be done by, or for, the carrier in discharge of the carrier's obligations imposed upon it, by law or by contract, in connection with its transportation of the property, that is, while the carrier's obligations are in course of being performed, while the Board reads the statute as though it covered acts done by or for the owner of the property before the carrier's obligation has attached or after it has been satisfied. If the Board is right, then mere ownership by a carrier of the controlling stock interest in a warehouse company which stores freight which has been or is to be transported by rail will convert that company into a carrier employer with the result that of two warehouse companies operating side by side performing the same service, storing freight which has been or is to be transported by rail, for the same customers, one will be an "employer," the other will not, according to whether its stock is, or is not, owned by a railroad company. We think it quite plain the words of the statute considered in themselves and especially in the light both of its purpose and of the legislative history made in the course of its enactment, completely negative this view. They make it plain that the critical words "in connection with the transportaton of property and of property transported by railroad" are used to denote transit and cover acts done only by or for the carrier while its obligations persist. We, therefore, agree with Duquesne that the judgment was right and that it should be affirmed. The same definition appears in the Carrier's Taxing Act [6] and in the Railroad Unemployment Insurance Act.[7] The Railway Labor Act,[8] as amended, carries substantially the same definition. Yet no one has claimed that Duquesne is subject to its terms.

Further, in litigation over the meaning of the definition when used in the Carriers' Taxing Act, the courts have uniformly repudiated the construction now placed by the Board in favor of the

[6] 50 Statutes, 435.
[7] 52 Statutes, 1094.
[8] 48 Statutes, 1185.

one we take.[9] But, says the Board in effect, the question is not what the courts think the act under construction here means, it is what the Board thinks it means, and the Board has spoken. Thus by virtue of being constituted the Board to administer the act, the Board has been endowed with a prescience, invested with a prepotence, in respect of statutory construction to which the courts must bow, though the facts are undisputed and the question is entirely one of law. Thus by the simple expedient of having a lawyer, under the dignified name of General Counsel for the Board issue an opinion and then adhering by a bare majority to that opinion, the Board is enabled to read the statute as it will. When the same general course was pursued by the administrator, and the same heresy was advanced in Fleming v. Belo,[10] the Courts had no difficulty in rejecting the claim. We find no difficulty in rejecting it here. None of the authorities [11] the Board cites sustain its position. Board v. Hearst, one of the cited cases, at page 130, correctly states the rule:

"Undoubtedly questions of statutory interpretation, especially when arising in the first instance in judicial proceedings, are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty it is to administer the questioned statute. Norwegian Nitrogent Products Co. v. U. S., 288 U. S. 294; United States v. American Trucking Ass'n., 310 U. S. 534; Niagara Falls v. Federal Power Comm., 137 F. (2) 787."

In Fleming v. Belo, the Fifth Circuit Court of Appeals pointed out that the great fallacy in the doctrine pressed in that case and generally by administrative absolutists that recent administrative construction of a statute, consisting of the legal opinion of the administration's general counsel, is entitled to great weight. This court, in Niagara Falls v. Federal Power Co., 137 F. (2), 792, spoke to the same effect:

"The conventional reason for the deference exacted from courts for such rulings has always been the advantage possessed by such tribunals in the background of specialized experience and understanding, gathered from a long acquaintance of the members with the subject matter, either while they are in office or before. The continuity of this experience is assumed to build up an acquaintance inaccessibly to others—courts included. If so, a single ruling, made shortly after the tribunal has been set up, should have far less weight than a series of repeated rulings over a course of years."

[9] Ocean Steamship Co. of Savannah v. Allen, 126 F. (2) 469; Magruder v. Baltimore, 144 F. (2) 130.

[10] 121 F. (2) 213; Affirmed 316 U. S. 624.

[11] Board v. Hearst Publications, 322 U. S. 111, 130–131; Endicott Johnson Corp. v. Perkins, 317 U. S. 501; Swift & Co. v. United States, 316 U. S. 216; Gray v. Powell, 314 U. S. 402; South Chicago Co. v. Bassett, 309 U. S. 251; Rochester Telephone Corp. v. United States, 307 U. S. 125; Eilers v. Railroad Retirement Board, 132 F. (2) 636 (C. C. A. 2d, 1943); South v. Railroad Retirement Board, 131 F. (2) 748 (C. C. A. 5th, 1942), cert. den. 317 U. S. 701.

The very structure of our institutions, the very sources from which they derive, the judicial section of the Constitution itself all concur to make it crystal clear why Congress has never given, why it could not constitutionally give to the construction of a statute by the General Counsel of an administrative body or by the body itself, controlling weight, and that the "appropriate weight" which the courts give to such construction is that which is not inconsistent with settled Constitutional doctrine. The heresy eagerly advanced by some devotees of the administrative, as opposed to the judicial, process,[12] and sometimes tolerated, sometimes toyed with judicially, that giving "due weight" means the surrender of the judicial office of interpreter of statutes, has never had official sanction.[13] Perhaps it has never been better negated, the true rule better stated, than by this court:

"In spite of the plentitude of discussion in recent years as to how far courts must defer to the rulings of an administrative tribunal, it is doubtful whether in the end one can say more than that there comes a point at which the courts must form their own conclusions. Before doing so they will, of course—like the administrative tribunals themselves—look for light from every quarter, and after all crannies have been searched, will yield to the administrative interpretation in all doubtful cases; but they can never abdicate. Even Gray v. Powell, 314 U. S. 402, 62 S. Ct. 326, 86 L. Ed. 301—a case which perhaps went as far as any other—left no doubt as to this. Mitchell v. U. S., 313 U. S. 80, 97, 61 S. Ct. 873, 85 L. Ed. 1201." Niagara v. Power Co., 137 F. (2) at 792.

And this is bound to be so for the very foundation stone of our liberties is the fact that judges without interest in the result are to determine and apply the law, as old Hooker put it, "with all indifferency."[14] When then a person, claiming to a third person, that is, neither a carrier nor an employee, aggrieved by a decision of a majority of the Board, applies to the courts to have that decision set aside, "as in violation of a legal right," the contention

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[12] Judging as Administration, Administration as Judging, Texas Law Review, November 1942.

[13] Said Justice Brandeis, dissenting in St. Joseph Stock Yards Co. v. U. S., 298 U. S. 38, "The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law applied." Cf. Board v. Hearst, supra; Niagara v. Power Co., supra.

[14] "We cannot be ignorant how much our obedience unto law dependeth upon this point. And so it is that 'notwithstanding even they which brook it worst that men should tell them of their duties, when they are told the same by law, think well and reasonably of it.' For why? They presume that the law doth speak with all indifferency, that the law is, as it were, an oracle proceeding from wisdom and understanding."

Buchanan, in 1579, said: "The maker of the law is the people, acting through a council of representatives, chosen from all classes, and the interpreter of the law should be not the king, but a body of independent judges."

While Locke declared that law is a definite, certain, known or knowable rule of action, in existence before, not after, the event, justly and impartially applied by known and indifferent judges, with authority to determine all differences according to established law.

that the Board, constituted as this one was, with two of its three members appointed on a partisan basis,[15] is endowed with any peculiar prescience in divining the meaning of a term so precisely defined by statute, must be supported by something more than the mere claim. A search of the statute and particularly of 228k, the section relating to court jurisdiction, reveals nothing in support. More it discloses that the statute does not prescribe finality for even the Board's conclusions of fact, and that for such finality as they have, the Board must rely entirely on the principle supporting administrative fact findings.[16] When we turn from the statute to the courts, we find no case which at all supports the claim made here that where a statute has defined a term, courts must, though they do not agree with it, follow the administrator's opinion as to its meaning. The opinion in Labor Board v. Hearst, the case mainly relied on here, makes clear the difference between that case and this. Pointing out that Congress, without defining it, had used a broad term "employees" broadly, leaving to the Labor Board to determine its application in particular situations, the Court said,

"But where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited."

Citing decisions of similar purport, it then concludes:

"the board's determination * * * is to be accepted if it has 'warrant in the record' and a reasonable basis in law."

Here Congress did not use the term "employer" broadly. On the contrary, it gave it a precise, a definite meaning. In this situation, the preceding sentence in the Hearst opinion, "Undoubtedly questions of statutory interpretation, especially when arising in the first instance in judicial proceedings, are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty is to administer the questioned statute," furnishes the guiding rule. The application of that rule requires an affirmance of the judgment. It is accordingly affirmed.

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[15] "* * * One member shall be appointed from recommendations made by representatives of the employees and one member shall be appointed from recommendations made by representatives of carriers, in both cases as the President shall direct, so as to provide representation on the Board satisfactory to the largest number, respectively, of employees and carriers concerned. One member, who shall be the chairman of the Board shall be appointed initially for a term of two years without recommendation by either carriers or employees and shall not be in the employment of or be pecuniarily or otherwise interested in any employer or organization of employees. * * *" 45 U. S. C. A. Sec. 228l.

[16] South v. Railroad Retirement Board, 131 F. (2) 748.

DISSENTING OPINION

FRANK, *Circuit Judge*, dissenting:

Judge Hutcheson charges the Board with advocating "heresy." Perhaps because of Judge Hutcheson's eager interest in heresy-hunting, his opinion here blurs the issues by inaccurately (but doubtless inadvertently) stating the Board's position before condemning it. In order to make clear my reasons for dissenting, I shall try to state the issues more precisely.

1. The first section of the Railroad Retirement Act,[17] defines "employer" to mean (a) any carrier of a designated character [18] or

(b) any noncarrier company if the noncarrier
(1) is "owned or controlled by" such a carrier,
and also
(2) "operates any equipment or facility or *performs any service* (except trucking service, casual service, and the casual operation of equipment or facilities) *in connection with the transportation* of passengers or *property by railroad*, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad." [19]

The Board, after a hearing (conceded by appellee warehouse company to have been fairly and properly conducted) decided, on the basis of the undisputed facts in the record before it, that appellee had the two specified statutory attributes of such a noncarrier employer, i. e., (1) its stock was wholly owned by railroad carrier and (2) it performed services "in connection with the transportation * * * of property by railroad."

2. No one disputes the fact that, since appellee's incorporation in 1906, all its stock has been "owned and controlled" by the Pennsylvania Railroad and that most of appellee's principal officers have been officers of the Pennsylvania. The only dispute is as to whether, on the admitted facts, appellee's activities are such that the Board could properly decide that appellee renders services "in connection with the transportation of property by [the Pennsylvania] railroad." The pertinent facts bearing on that issue are, briefly, as follows:

The Board, in its opinion, cited and quoted from B. & O. R. R. Co. v. United States, 305 U. S. 507, 516–517, as showing that it is well known that the average large railroad owns or controls a subsidiary or affiliated warehouse company with warehouses adjacent to the railroad's tracks, not as a mere investment, but to increase traffic over the railroad's lines by inducing shippers to use the road's "particular rail facilities." [20] Initially, this policy involved

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[17] 45 U. S. C. A. § 228a.

[18] A carrier is defined in the Act as an express company, sleeping-car company or carrier by railroad subject to Chapter 1 of Title 49.

[19] Italics added.

The statute also defines "employer" to include certain other persons, but those provisions have no pertinence here.

[20] Cf. Propriety of Operating Practices—New York Warehousing, 198 I. C. C. 134; 216 I. C. C. 291.

the supplying of warehouse services by the railroads at figures below cost, a practice which the Interstate Commerce Commission subsequently prohibited. But the convenience to shippers of what the Supreme Court called "accessorial services of the carriers, accurately designated commercial warehousing,"[21] and the resultant advantages to the several railroads in attracting rail shipments to their respective lines, have led to the continued rendering of such warehouse services by railroad-owned warehouse companies. The facts here make it clear that the Pennsylvania organized appellee, and that appellee's activities are now conducted, as a part of just such a railroad policy, i. e., to aid the Pennsylvania in seeking to increase the transportation of goods over its railroad system.[22]

The major part of appellee's business consists of the warehousing loading and unloading (and other conduct incident thereto) of goods which have been, or are to be, transported over the lines of the Pennsylvania. The warehouses which appellee operates were constructed and are owned by the Pennsylvania. Those Pennsylvania-owned warehouses, located in the same buildings with the Pennsylvania's freight agencies, are highly convenient for use as distribution points by shippers who transport their goods over the Pennsylvania's railroad lines. In actual practice, nearly all the property handled by appellee is transported inbound or outbound or both over the Pennsylvania's rails. Appellee stores a large part of such property while it is in the course of suspended through-interstate-shipment under storage-in-transit privileges published in the Pennsylvania's tariffs. Appellee also handles, reconditions and sells, for the Pennsylvania, damaged refused freight and damaged unclaimed freight. Thereby Pennsylvania is able to collect freight and other charges on unharmed freight and to recoup losses on goods damaged in transit.

On the basis of these facts (which I have stated in summary manner), the Board found that appellee's operations are "closely related, functionally and economically" to the "transportation of property by railroad." Accordingly, the Board decided that appellee is an "employer" within the meaning of the first section of the Act.

3. The Board in its opinion, and in its briefs and oral arguments in this court, has not contended that its interpretation of the Act, without regard to its reasonableness, binds the courts. Far more modestly, the Board contends thus: Its interpretation has no final-

[21] 305 U. S. at 516.

[22] In its opinion the Board said: "It may be noted that warehousing activities like those of Duquesne are conducted by numerous railroads throughout the United States, either directly or through subsidiaries, as an incident to their railroad transportation service, because by providing such services, railroads are able to induce shippers to use their rail facilities and thereby increase the volume of traffic over their respective lines. * * * And it has been recognized that such warehousing facilities are conducted for the same purpose and achieve the same results, whether they are conducted directly by the railroads or by subsidiaries of the railroads."

ity; a person adversely affected by the Board's decision must, of course, be afforded an opportunity to have some court decide whether an erroneous rule of law has been applied; if only one reasonable interpretation is open, that court must adopt it, regardless of the Board's view. But, if more than one reasonable interpretation is possible, the court must accord considerable weight to the Board's interpretation, made as a necessary adjunct of the Board's administrative decision rendered after an administrative hearing; the court must then accept the Board's interpretation if it is reasonably permissible. I agree with this contention. Approaching the statute in this manner, I think that, for reasons I shall state later, the Board's interpretation should be sustained because it is not unreasonable, even if an alternative interpretation might also be reasonable.

4. My colleagues do not deal with the Board's modest contention: They do not consider whether the Board's construction of the Act is reasonably permissible and therefore to be followed by us. Instead, they hold that no more weight can be judicially accorded the Board's interpretation than if it were (a) part of an argument advanced by an ordinary private litigant in a suit involving the meaning of the statute, or (b) the interpretation of the statute by a lower court or (c) of a court in another jurisdiction in another unrelated suit involving this statute. My colleagues therefore proceed to their own independent construction of the Act, without attaching any peculiar significance to the Board's, and, on that basis, conclude that the Board erred.

I think that, in the light of the Supreme Court decisions, my colleagues are wrong in their approach. Because of those Supreme Court decisions, I think that, even if the Board's construction of the Act had not been embodied in a decision reached after an administrative hearing, the courts would be obliged to give more respect to that construction than to that of an ordinary litigant, a lower court, or a court in another jurisdiction. I shall discuss this subject in some detail not merely because of its bearing on the instant case but for fear that, unless I do, the views here expressed by Judge Hutcheson may be taken as indicating the position of this Circuit in dealing with administrative agencies generally.

In arriving at his conclusion, Judge Hutcheson, speaking in the instant case for this court, repeats and relies upon the reasoning which, speaking for the Fifth Circuit, he employed in a dictum some four years ago in Fleming v. A. H. Belo Corp., 121 F. (2d) 207, 213, a case involving a statutory interpretation by the Wage

and Hour Administrator.[23] But, significantly, Judge Hutcheson, in his opinion in the instant case, refrains from mentioning Skidmore v. Swift & Co., 323 U. S. 134 in which, a few weeks ago, the Supreme Court, unanimously reversing the Fifth Circuit,[24] flatly rejected that reasoning. There, in an action brought by the Wage and Hour Administrator to enforce the Fair Labor Standard Act, the Supreme Court said (per Mr. Justice Jackson): "Congress did not utilize the services of an administrative agency to find facts and to determine in the first instance whether particular cases fall within or without the Act. Instead, it put this responsibility on the courts. Kirschbaum v. Walling, 316 U. S. 517, 523. But it did create the office of Administrator, impose upon him a variety of duties, endow him with powers to inform himself of conditions in industries and employments subject to the Act, and put on him the duties of bringing injunction actions to restrain violations. Pursuit of his duties has accumulated a considerable experience in the problems of ascertaining working time in employments involving periods of inactivity and a knowledge of the customs prevailing in reference to their solution. From these he is obliged to reach conclusions as to conduct without the law, so that he should seek injunctions to stop it, and that within the law, so that he has no call to interfere. He has set forth his views of the application of the Act under different circumstances in an interpretative bulletin and in informal rulings. They provide a a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it. Wage and Hour Division Interpretative Bulletin No. 13 [pp. 137–138]. There is no statutory provision as to what, if any, deference courts should pay to the Administrator's conclusions. And, while we have given them notice, we have had no occasion to try to prescribe their influence. The rulings of this Administrator are not reached as a result of hearing adversary proceedings in which he finds facts from evidence and reaches conclusions of law from findings of fact. They are not, of course, conclusive,

[23] The Supreme Court affirmed the decision in the Belo case, but it did not adopt Judge Hutcheson's dictum; it rested its decision, in effect, on the ground that the Administrator's interpretation was clearly at variance with the legislative intention. Walling v. Belo Corp., 316 U. S. 624. On the very day of its Belo decision, the Supreme Court, in Overnight Motor Transportation Co. v. Missel, 316 U. S. 572, 580 note 17, said that the Wage and Hour Administrator's "interpretative bulletins . . . carry persuasiveness as an expression of the view of those experienced in the administration of the Act and acting with the advice of a staff specializing in its interpretation and application." That ruling is surely at variance with Judge Hutcheson's dictum.

That dictum criticized the following statement of the Supreme Court in United States v. American Trucking Associations, 310 U. S. 534, 549, with reference to recent administrative interpretations of a new and untried statute: "In any case such interpretations are entitled to great weight. This is peculiarly true here where the interpretations involve 'contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.'" Despite Judge Hutcheson's adverse comment, the Supreme Court has subsequently in several cases cited this criticized passage. See, e. g., Overnight Motor Co. v. Missel, 316 U. S. 572, 581; Noble v. United States, 319 U. S. 88, 93; Colgate Co. v. United States, 320 U. S. 422, 426; N. L. R. B. v. Hearst Publications, 322 U. S. 111, 131.

[24] 136 F. (2d) 112 (C. C. A. 5).

even in the cases with w[illegible] they directly deal, much less in those to which they apply only by analogy. They do not constitute an interpretation of the Act or a standard for judging factual situations which binds a district court's processes, as an authoritative pronouncement of a higher court might do. But the Administrator's policies are made in pursuance of official duty, based upon more specialized experience and broader investigations and information than is likely to come to a judge in a particular case. They do determine the policy which will guide applications for enforcement by injunction on behalf of the Government. Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at variance only where justified by very good reasons. The fact that the Administrator's policies and standards are not reached by trial in adversary form does not mean that they are not entitled to respect. This Court has long given considerable and in some cases decisive weight to Treasury Decisions and to interpretative regulations of the Treasury and of other bodies that were not of adversary origin. We consider that the rulings, interpretations, and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control" [pp. 139–140]. I find it impossible to reconcile that opinion with what Judge Hutcheson said in the Belo case or says in his opinion here.

It surprises me that the mild doctrine of the Skidmore case should be regarded as heresy.[25] It scarcely deserves Judge Hutcheson's eloquent denunciation, adorned with quotations from the writings of George Buchanan (1506–1582),[26] Richard Hooker (1554–1600)[27] and John Locke (1632–1704).[28] Judge Hutcheson might more pertinently have quoted from a more recent English

[25] In the Belo case, Judge Hutcheson overstated the Administrator's contention before denouncing it. And, in the instant case, he has similarly overstated the Board's contention before lampooning it.

[26] Buchanan's book, De jure regni apud Scotos, was written in 1579 for the instruction of the future King James I of England. Previously, Buchanan had assisted at the trial of James' mother Mary Queen of Scots; we are told that "it must be admitted that Buchanan was a willing agent in Moray's disingenuous handling of the case against the Queen." 4 Encyc. Britannica (1943) 310.

[27] "The main object of" Hooker's book, The Laws of Ecclesiastical Polity, written in the latter part of the 16th century, "was to show that the Puritans, in refusing obedience to the established church, were implicitly denying the foundations of all political obligations." It "was the last great statement of what might be called the medieval tradition, before that tradition was snapped by the stresses and strains of civil war." It was a "defense of the royal leadership of the national church. * * *" Sabine, A History of Political Theory (1937) 439, 443.

[28] Locke, writing at the end of the 17th century, defending the revolution of 1688, urged, as essential, a separation of governmental functions into the legislative,

writer, J. Toulmin Smith, who in 1849, in his book Government by Commission, warned his countrymen that "the blighting influence of Commissions" granted powers in violation of fundamental law, "has so overspread the land * * * that total subversion of all free institutions and of all free spirit of enterprise has been reached."[29] But as Cavers observes,[30] England, which did not heed Smith's warnings, and which indeed subsequently extended the powers of Commissions, managed to survive for many decades"; in fact, in the forty years following Smith's disregarded Jeremiad, England rose to the height of her pros-

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the executive and the "federative" function (the latter being the treaty-making or "foreign office" function).

However, he went further than in this country we would go, in suggesting that discretion must be vested in the executive, saying that "many things there are which the law can by no means provide for, and these must necessarily be left to the discretion of him that has the executive power in his hands, to be ordered by him as the public good and advantage should require * * *. This power to act according to discretion for the public good, without the prescription of the law and sometimes even against it, is that which is called the prerogative. * * *" Because, among other things, "it is impossible to foresee and so by laws to provide for all accidents and necessities that may concern the public, or make such laws as will do no harm if they are exercised with an inflexible rigor on all occasions and upon all persons that may come in their way, therefore there is a latitude left to the executive power to do many things which the laws do not prescribe." Locke's second Treatise Concerning Civil Government (1690) Chapters XII and XIII.

In the 18th century English government, which corresponded roughly to Locke's formula, there was by no means a rigid separation of powers. Holdsworth, History of English Law, X, 720 (1938). Holdsworth says that Lévy-Ullman is quite correct in noting that England "is not the classic country of the separation of powers," and that "each unit of government has of its own characteristic expression without ceasing to retain some of the features of the others"; he also endorses Halévy's comment that in the 18th century "the British government was not a government in which all the powers were clearly distinguished. It was rather a government in which all the constituent parts were confused and in which all the powers mutually encroached." And Holdsworth goes on to say: "We have seen that, in the sphere of local government, the distinction between the three different functions of government did not exist; that quarter and petty sessions, in town and country alike, exercised legislative, executive and judicial functions; and that the functions of many of the other units of local government were equally amorphous. It was the same with the central government. The Crown was and still is an essential part of the Legislature; and, in the eighteenth century, the Crown was able, wherever it wished to do so, both to initiate legislation, and to exercise a considerable influence on the content of bills pending in the two Houses of Parliament. The House of Lords," which acted as a court, "was and still is a part of the legislative machinery of the state. Some of the privileges of the House of Commons gave and still give it some of the characteristics of a court of law * * *. The Lord Chancellor was, and still is, a judge, a member of the House of Lords, and a minister; in at least one instance, the Lord Chief Justice of the King's Bench had been a member of the cabinet."

[29] Smith inveighed against those who, ignoring "fundamental law," were "striving to obtain all arbitrary power over every species of property, public and private, under the cloak of 'Commissions' * * *. By the fundamental law * * * every possible precaution is taken against the person or property of any man becoming the victim, under any pretext whatever, of any arbitrary caprice or prejudice * * *. The blighting influence of Commissions has so overspread the land * * * that the total subversion of all free institutions and of all spirit of enterprise and energy has been reached * * *. All such Commissions * * * have * * * the same and necessary tendency and result of introducing an arbitrary power and government * * *. They are purely arbitrary instruments of irresponsible and despotic power." To Commissions "are daily being more and more given over, the arbitrary management and control of the properties and liberties of Englishmen * * *. There now exist in this country many courts (Commissions) * * * as illegal and arbitrary as the Court of Star Chamber * * *. Parliament itself will soon be reduced to be little more than the register of the decrees of an absolute government * * *. Many of its essential functions are now openly attempted to be discharged * * * not by the common council of the whole nation, elected by the nation, but by a few belonging to a special clique, and selected by the ministers of the crown * * *. What is wanted is the unfettering of all individual effort; the taking off of those trammels that bind down skill and enterprises and all self-depending energies, and are daily binding them down harder * * *. If this country is to maintain its position, if it is to be secure against such scenes as the nations of Continental Europe have beheld during the past year * * * some must be found who, taking their stand on the Fundamental Laws and Institutions of the land, shall thus achieve that first and most essential step by which this country shall be relieved from the now all-prevailing incubus of Government by Commissions."

[30] 47 Yale L. J. (1938) 675, 678.

perity while winning the admiration of all lovers of democracy for the liberty-cherishing character of her domestic institutions.

The Skidmore doctrine is not new.[31] The Supreme Court had previously said much the same, although somewhat more elliptically, as to the Wage and Hour Administrator,[32] and at length—but with more emphasis—as to other administrative officers and agencies when engaged in interpreting statutes in connection with decisions made after administrative hearings.[33]

Even before the Supreme Court had thus plainly spoken, this court, more than six years ago, in S. E. C. v. Associated Gas & Electric Co., 99 F. (2d) 795, 798 (C. C. A. 2), when sustaining an administrative statutory interpretation, had said (per Judge A. N. Hand): "Moreover, we are dealing with a new act the administration of which is the peculiar function of the Securities and Exchange Commission. One of the principal reasons for the creation of such a bureau is to secure the benefit of special knowledge acquired through continuous experience in a difficult and complicated field. Its interpretation of the Act should control unless plainly erroneous. In no other way can the objects of the Act be attained without constant and disconcerting friction. Norwegian Nitrogent Products Co. v. United States, 288 U. S. 294, 315."

Judge Hutcheson, in support of his position, cites and quotes a truncated portion of our opinion in Niagara Falls Power Co. v. Federal Power Commission, 137 F. (2d) 787, 792 (C. C. A. 2); but in that case, where an initial statutory interpretation by a Commission had later been rejected by it, we accepted the subsequent administrative interpretation, saying (p. 792): "Indeed, the very reason which forbids a court from lightly overruling an administrative ruling, a fortiori forbids its undertaking to say that a later ruling is mistaken when it reverses the earlier one. We must assume that continued occupation with the subject has disclosed the past error better than we can do ourselves."

In this circuit, recognizing the Supreme Court as the authoritative head of the federal judicial hierarchy, we have heretofore felt obligated, as an intermediate tribunal, to follow the rulings of that Court whether or not any members of this court happened to like those rulings.[34] Consequently, I do not feel it necessary to defend

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[31] In 1877, the Supreme Court said in United States v. Moore, 95 U. S. 760, 763: "The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons. Edwards v. Darby, 12 Wheat. 210; United Sates v. The State Bank of North Carolina, 6 Pet. 29; United States v. MacDaniel, 7 id. 1. The officers concerned are usually able men, and masters of the subject."

[32] See, e. g., Overnight Motor Co. v. Missel, 316 U. S. 572, 580 note 17; United States v. American Trucking Associations, 310 U. S. 534, 549.

[33] See, e. g., Gray v. Powell, 314 U. S. 402; N. L. R. B. v. Hearst Publications, 322 U. S. 111, 130–131.

[34] We have often accepted Supreme Court doctrines of which we were critical. See, e. g., Wallace v. U. S., 142 F. (2d) 240, 243 (C. C. A. 2); Hammond-Knowlton v. U. S., 121 F. (2d) 192 (C. C. A. 2).

We have also said that it is our duty to follow "doctrinal trends" clearly manifest in Supreme Court decisions. See L. Hand, J., in Picard v. United Aircraft Corp., 128 F. (2d) 632, 636 (C. C. A. 2); Zalkind v. Scheinman, 139 F. (2d) 895, 903 (C. C. A. 2); Cf. Choate v. Commissioner, 129 F. (2d) 684, 686 (C. C. A. 2).

the Supreme Court against charges of heresy; for I think we must bow to its determinations even if, perchance, we should find Judge Hutcheson's political philosophy and heresiography more attractive.[35]

I note in passing that in this Circuit we have not believed that the Supreme Court has suggested that we submit to "administrative absolutism,"[36] and consequently we have not hesitated to protect the legal rights of citizens when administrative officers have acted in excess of their statutory powers. See, e. g., Goldman v. American Dealers Service, 135 F. (2d) 398 (C. C. A. 2); United States v. Downer, 143 F. (2d) 125 (C. C. A. 2); The Truth Seeker Company, Inc. v. Durning, — F. (2d) — (C. C. A. 2, January 18, 1945); In the Matter of New York, New Haven & Hartford Railroad Company, — F. (2d) — (C. C. A. 2, January 2, 1945); Bowles v. Sacher, 146 F. (2d) 186 (C. C. A. 2).

The Skidmore case should constrain us to respect the Board's statutory interpretation, even if the Board had merely the statutory authority of the Wage and Hour Administrator. But the Board's authority is greater. As noted in the Skidmore case, the Wage and Hour administrator is not empowered, ordinarily to hold an administrative hearing before he brings a suit to enforce the Fair Labor Standard Act.[37] But, unlike that Administrator, the Retirement Board is authorized and directed by Congress to make administrative decisions in specific cases. True, the Retirement Act does not specifically require that, before reaching its decisions, the Board shall hold hearings (at which it receives evidence) and file findings of fact and legal conclusions. But the Act[38] does require the Board to "establish rules and regulations

[35] I cannot believe it advisable to reintroduce into our legal system the notion of heresy, i. e., the wilful and persistent opposition to ideas authoritatively defined as truth. Surely we do not want to revert to treating erroneous thinking as a crime, to retrace the steps which led away from the pernicious writ de haeritico comburendi. We should remember that those zealous to condemn men to burning at the stake for heresy acknowledged that heresy "belonged to a man's thoughts and not his deeds," and could therefore be proved only by suspicion; that, consequently, they instituted a regime of systematic inquiry into what went on in men's minds, and graded suspicions into "light" suspicions calling for vigilance, "vehement" suspicions demanding punishment, and "violent" suspicions, requiring punishment by the State.

John Stuart Mill wisely observed: "But it is not the minds of heretics that are deteriorated most by the ban placed on all inquiry which does not end in orthodox conclusions. The greatest harm is to those who are not heretics, and whose mental development is cramped, and their reason cowed, by the fear of heresy. There have been great * * * individual thinkers in a general atmosphere of mental slavery. But there never has been, nor ever will be, in that atmosphere an intellectually active people. * * * He who knows only his own side of the case knows little of that." Liberty, Chapter II.

[36] The use of the phrase "administrative absolutism" (a product of epithetical jurisprudence) has become fashionable with those who maintain that invariably—in the very nature of things—administrative agencies, and especially the federal agencies, tend to deprive citizens of their civil liberties, while, by way of contrast, the courts, because of their inherent nature, zealously protect those fundamental legal rights. Judge Wyzanski recently raised a grave doubt as to the universal validity of that thesis. "It is not an accident," he writes, "that the administrative machinery of the Fair Employment Practices Commission has accomplished more in three years than the courts in seventy-five years under national and local laws against discrimination." 58 Harv. L. Rev. (1945) 285, 288. Of course, Judge Wyzanski would not for a moment deny the right to, or question the wisdom of, judicial review of an administrative agency's conduct; nor would I.

[37] Certain exceptions (with reference to industry orders) are not pertinent here. Gemsco v. Walling, — U. S. — (February 26, 1945).

[38] 45 U. S. C. A. § 228j (b) (4).

to provide for the adjustment of all controversial matters arising in the administration" of the Act, coupling this requirement with one empowering the Board to "require and compel the attendance of witnesses, administer oaths" and "take testimony." Pursuant to these provisions, the Board has established detailed regulations for formal hearings, with an opportunity to be heard, and for decisions coupled with findings (based on the evidence) and conclusions of law. And, as to appellee, just that has been done. In the discharge of its statutory duty in arriving at its decision here, the Board has, unavoidably, interpreted the statute. Such an interpretation, consequently, ranks higher than that of the Wage and Hour Administrator in cases where he holds no hearings.[39]

The Retirement Board's interpretation is, I think, in the same category as the interpretation by the National Labor Relations Board of the meaning of the word "employees" in the National Labor Relations Act. In N. L. R. B. v. Hearst Publications, Inc., 322 U. S. 111, 130–131, the Court held that where that Board, in the course of a specific proceeding necessarily involving that issue, holds that certain persons are "employees," then "the reviewing Court's function is limited,"[40] more limited than when similar "questions of statutory interpretation" arise "in the first instance in judicial proceedings," (although even then, the Supreme Court said the courts must give "appropriate weight" to the interpretation "of those whose duty is to administer the questioned statute"). The Supreme Court said that it was "not necessary" for the courts "to make a completely definitive limitation around the term 'employee.' That task has been assigned primarily to the agency created by Congress to administer the Act * * *. Resolving that question * * * 'belongs to the usual administration' of the Board. Gray v. Powell, 314 U. S. 402, 411. Cf. Labor Board v. Standard Oil Co., 138 F. (2d) 885, 887–888."[41] It is not without significance that the Supreme Court in so deciding reversed the Ninth Circuit[42] which, in its opinion, used substantially the same reasoning for disregarding the administrative interpretation as that contained in Judge Hutcheson's opinion here.

Whether particular persons are "employees" under the National Labor Relations Act is no more and no less "jurisdictional" than whether a particular person is an "employer" within the definition of that term under the Retirement Act; and the N. L. R. A. gives the Labor Board no more and no less express authority to construe "employees" than the Retirement Act gives the Retirement Board to construe "employer," as defined in that Act. Hence I think we

[39] As to the effect of an administrative hearing on an administrative interpretation, see Southern Garment Manufacturers v. Fleming, 122 F. (2d) 622, 633 (App. D. C.).

[41] The Standard Oil opinion was by this court (per L. Hand, J.); it described, in the cited portion, the limited power of courts in reviewing administrative decisions.

[42] 136 F. (2d) 608, 611–612.

should no longer regard as authoritative the dictum in Shields v. Utah R. Co., 305 U. S. 177, 185, that an administrative interpretation when it involves a "jurisdictional" question can have no weight unless the administrative agency is specifically directed by the statute to pass on such a question.[43] Accordingly, I think we should not follow the dictum in Utah Copper Co. v. Railroad Retirement Board, 129 F. (2d) 358, 361 (C. C. A. 10) which rested on the dictum in the Shields case.[44] It is noteworthy, in this connection, that in reaching its conclusion in the Hearst case, the Supreme Court cited Gray v. Powell, 314 U. S. 402, and United States v. American Trucking Associations, 310 U. S. 534; for the Supreme Court thus further showed that the worth of an administrative interpretation is the same whether (as in Gray v. Powell and United States v. American Trucking Associations) the administrative officer is specifically required to determine a "jurisdictional" issue, or (as in the Hearst case) merely required to do so impliedly as an unavoidable incident of the discharge of its statutory duty in hearing and deciding a particular case.

I do not believe (as my colleagues do) that, when the Supreme Court in the Hearst case spoke of a "broad statutory term," it intended to preclude the application of the doctrine it there announced to statutory terms which, while somewhat detailed, are reasonably capable of alternative interpretations. Nor can I agree with the suggestion that we should assume that Supreme Court rulings relative to the Labor Board are not to be applied to other agencies when the Supreme Court's opinions otherwise indicate; we rejected such an argument in Herzfield v. Federal Trade Commission, 140 F. (2d) 207, 209 (C. C. A. 2). And Gray v. Powell, 314 U. S. at 412, answers the suggestion that the doctrine here under discussion becomes inoperative when there is "no dispute as to the evidentiary facts."

For the foregoing reasons, and in line with previous uniform decisions in this Circuit, I agree with the Retirement Board's contention that we must accord considerable weight to its statutory construction, necessarily incident to its decision rendered in this particular case after an administrative hearing.[45] To quote the Attorney General's Committee on Administrative Procedure, the question is not whether the Board gave the statute the "right

[43] Cf. Dickinson, Crowell v. Benson: Judicial Review of Administrative Determination of Questions of "Constitutional Fact," 80 U. of Pa. L. Rev. (1932) 1055, 4 Selected Essays on Constitutional Law, 993, 998–1000, 1002–1004, 1013–1014, 1017–1020; Jacoby, Administrative Law and Railroad Retirement Legislation, 12 U. of Chi. L. Rev. (1944) 26, 48–56.

[44] Ellers v. Railroad Retirement Board, 132 F. (2d) 636, 638–639 (C. C. A. 2) is not in point. There we held that no weight should be given to a regulation of the Board determining a fact affecting not the Board's jurisdiction but that of the district courts.

[45] See, e. g., S. E. C. v. Associated Gas & El. Co., 99 F. (2d) 795, 798 (C. C. A. 2); Morgan Stanley & Co. v. S. E. C., 126 F. (2d) 325, 332 (C. C. A. 2); Associated Industries v. Ickes, 134 F. (2d) 694, 710–711 (C. C. A. 2); Niagara Falls Power Co. v. Fed. Power Commission, 137 F. (2d) 787, 792 (C. C. A. 2).

interpretation," but whether its interpretation has "substantial support." [46] We have heretofore in this court and I think we should now read the Supreme Court's decisions [47] as admonishing us thus: The courts must acquiesce in such an administrative interpretation unless it is plainly erroneous; [48] if the Board's conclusion is rationally permissible, it is irrelevant that, independently, we might otherwise reasonably construe the statute; when two or more alternative interpretations are open, the administrative interpretation if reasonable must be accepted. This doctrine of the Supreme Court has been stated succinctly by the Attorney General's Committee as follows: An administrative body's interpretation "is to be given weight—not merely as the opinion of some men or even of a lower tribunal, but as the opinion of the body especially familiar with the problems dealt with by the statute and burdened with the duty of enforcing it." [49] Cf. Gray v. Powell, 314 U. S. 402, 413; Dickinson, Judicial Review of Administrative Determinations, 25 Minn. L. Rev. (1941) 588, 592, 593; Stern, Review of Findings of Administrators, Judges and Juries, 58 Harv. L. Rev. (1944) 70, 99–109, 122–124; Timberg, Administrative Fact Findings, 27 Wash. U. L. Q. (1941) 62, 169, 4 Pike & Fischer, Administrative Law, 359 at 383.

5. Accordingly, I consider it our restricted function to ascertain whether the language of the Act precludes the Board's conclusion on the ground that it lacks reasonableness. Applying that test, I think we should sustain the Board's decision.

Appellee rests its contention as to the unreasonableness of the Board's conclusion on the following grounds: (1) The language of the "employer" definition in the Retirement Act is virtually the same as that found in the definition of "transportation" in the first section of the Transportation Act. [50] (2) The courts and the Interstate Commerce Commission have so construed "transportation" in the Transportation Act as to include only acts done in discharge of a carrier's obligations imposed upon it by law or contract. (3) Therefore appellee is not an "employer," because it does not perform acts for the Pennsylvania in the discharge of that carrier's obligations thus imposed upon it. I do not agree that such an argument compels the conclusion that the Board unreasonably interpreted the statute.

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[46] Final Report of Attorney General's Committee on Administrative Procedure (1941) 90–91.

[47] See, e. g., United States v. American Trucking Associations, 310 U. S. 534, 549; Gray v. Powell, 314 U. S. 402, 411; N. L. R. B. v. Hearst Publications, 322 U. S. 111, 130–131; Overnight Motor Co. v. Missel, 316 U. S. 572, 580; Billings v. Truesdell, 321 U. S. 542, 552; Colgate v. United States, 320 U. S. 422, 426; Noble v. United States, 319 U. S. 88, 93.

[48] I so read the statement in N. L. R. B. v. Hearst Publications, supra, at 131 that the administrative interpretation must be accepted if "it has a 'warrant in the record' and a reasonable basis in law."

[49] Loc. cit., supra, note 27, p. 91.

[50] 49 U. S. C. A. §1 (3).

(a) In the first place, as the purposes of the two statutes are not identical, this argument would not necessarily be sound even if the two sections were identically worded. United States v. Colorado & N. R. Co., 157 Fed. 321, 330 (C. C. A. 8, cert. den. 209 U. S. 544) construing the Safety Appliance Act; cf. South Chicago Co. v. Bassett, 309 U. S. 251, 259-261.

(b) More important, the two sections are not identical. The Transportation Act, in defining "transportation," includes railroad facilities "and all services in connection with the receipt, delivery * * * storage and handling of property transported." The same language is found in the definition of "employer" in the Retirement Act. But the definition of "transportation" in the Transportation Act does not include the phrase, contained in the Retirement Act, "performs any service in connection with the transportation of * * * property by railroad." And the phrase as to "storage," etc., common to both Acts, is, in the Retirement Act, separated from the other phrase (i. e., "any service in connection with the transportation") by the word "or." The Retirement Act definition is thus disjunctive. It is therefore broader than the definition in the Transportation Act. To hold otherwise would be to read out of the Retirement Act the phrase "any service in connection with the transportation * * *."[11]

It follows, I think, that the Board reasonably concluded that the Retirement Act coverage is not limited to the same subject matter as "transportation" in the Transportation Act. Accordingly, we cannot say that the Board's interpretation of the Retirement Act to include appellee as an "employer" was unreasonable. If that be true, we never reach the question whether the construction for which appellee contends, and which my colleagues accept, is not also an alternative reasonable reading of the statute.

6. My colleagues state that "in litigation over the meaning of the definition [of employer] when used in the Carrier's Taxing Act, the courts have uniformly repudiated the construction now placed by the Board in favor of the one we take," citing, as evidence of this uniformity, Allen v. Ocean S. S. Co. of Savannah, 123 F. (2d) 469 (C. C. A. 5) and Magruder (Walling) v. Baltimore Steam Packet Co., 144 F. (2d) 130 (C. C. A. 4). Those cases, however, did not relate to warehouse companies like appellee but to steamboat companies; and it may be that the legislative history excludes entities of the latter kind from the Act's coverage, a question we need not here consider.

7. The legislative history does not, however, shed too much light on the application of the Act to a warehouse company operating as does appellee.

[11] That such an interpretation is improper, see, e. g., McDonald v. Thompson, 305 U. S. 263, 266; Ex Parte Public Bank, 278 U. S. 101, 104.

Appellee stresses the testimony of witnesses before Congressional committees as showing that the purpose of Congress was not to include such a company within the Act. But it has never been held that such testimony constitutes part of the legislative history bearing on the legislative intention. Associated Industries v. Ickes, 134 F. (2d) 694, 710 (C. C. A. 2).[33] What we said in S. E. C. v. Robert Collier, 76 F. (2d) 939, 941 (C. C. A. 2) is not apposite; there the testimony consisted of recommendations, for amendment of a statute, made by the administrative agency responsible for prosecution of the new functions conferred upon it by the amendment. In the case of an ordinary witness, the fact that he aided in drafting the bill is of little significance, for the reasons expressed by Lord Halsbury in Holden v. Dexter [1902] A. C. 474, 477.

The Board, however, directs attention to this passage in the report of the Senate Committee: "By these changes there are brought within the scope of the Act substantially all those organizations which are intimately related to the transportation of passengers or property in the United States." The Board also cites the statement on the floor of the Senate by Senator Wagner, who was then in charge of the Bill, that "it covers a great number of employees, not only those directly in the railroad business but those associated with it, and in that regard is more liberal than the present Act." While these remarks are legitimate parts of the legislative history and favor the Board's position, nevertheless they are somewhat ambiguous since they may have referred to portions of the initial section of the Act not here pertinent.

8. My colleagues seek to diminish the importance of the Board's statutory interpretation on three grounds:

(a) The Board's decision, say my colleagues, was by "a bare majority." But since there are but three members of the Board, any of its decisions if not unanimous must be by a majority of one. So, too, is the decision of this court in this case; and we have held that a dissent by a member of an administrative agency no more vitiates its decision than does a dissent in the case of a judicial decision.[33]

(b) The Board's proceeding began, say my colleagues, with a mere opinion of its General Counsel, which the Board substantially adopted as its decision. But this procedure is expressly contemplated by the Act[34] which empowers the Board "to delegate to any of its employees the power to make decisions on applications for annuities or death benefits in accordance with rules and regulations prescribed by the Board, Provided, however, That any person aggrieved by a decision so made shall have the right to appeal to the Board." The Board's regulations, pursuant to this statutory

[33] Cf. McCaughn v. Hershey Chocolate Co., 283 U. S. 488, 493–494.
[33] Speary Gyroscope Co. v. N. L. R. B., 129 F. (2d) 922, 924 (C. C. A. 2).
[34] 45 U. S. C. A. § 229j (b) (5).

provision, delegate initial decision-making to its General Counsel and provide for an appeal to the Board. Here appellee thus appealed, and, on that appeal, the Board gave its decision after a full hearing.

(c) The members of the Board, my colleagues say, are "appointed on a partisan basis." Nevertheless both Judge Hutcheson, in South v. Retirement Board, 131 F. (2d) 748, 750 (C. C. A. 5),[35] and this court in Ellers v. Retirement Board, 132 F. (2d) 636, 639-640 (C. C. A. 2), have heretofore dealt with this Board as if its "informed" or "experienced" judgment entitled its decisions to precisely the same judicial respect as that of any other administrative agency.[36]

9. To the argument that the Board's interpretation means the inclusion of many activities outside the "railroad industry" the short answer is that it does not do so unless the company performing the services is owned or controlled by a carrier. If a company both (a) performs such services and (b) is thus owned, it is not necessary that the company be, in effect, a mere incorporated department of the railroad company. I see no cogency in the argument that the Board's decision brings within the Act a warehouse company performing services of the type defined in the Act, if the company is owned or controlled by a railroad company, but not if it is independently owned and controlled. Congress, not the Board, made the differentiation. Nor will it do to "parade the horribles" by pointing to the possibility that the Board may hereafter seek to apply the Act to companies whose services have no intimate relation to a carrier's transportation activities.[37] If such cases should arise, the courts will deal with them.

It should be noted in this connection that, as pointed out in its opinion in this case, the Board has decided that many types of non-carrier companies owned or controlled by railroads are not "employers," e. g., telegraph, water-supply, bus, railroad land, electric power, companies, and many others.

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[35] Judge Hutcheson's opinion in South v. Retirement Board, supra, expressly adopted "as correct" the statement of Judge Underwood in Holloway v. Railroad Retirement Board, 44 F. Supp. 59; there Judge Underwood spoke of the "informed judgment" and the "experienced judgment" of this Board, citing cases relating, inter alia, to the Interstate Commerce Commission, the National Labor Relations Board, and the Federal Communications Commission.

[36] True, South v. Retirement Board, supra, dealt solely with the Board's fact-finding power. But Judge Hutcheson regards that as the only power of any administrative agency which the courts must respect. If, however, he is wrong on that issue, and of statutory interpretations of such agencies do deserve judicial respect because based on "experienced judgment," then I fail to see how he can rationally differentiate such interpretations by this Board merely because of the manner in which, by statute, its members are appointed, since he has held that this Board's judgment is no less "experienced" than that of other agencies.

[37] The Board's Regulation 202.7, an "interpretative" regulation, shows that the Board has no intention thus to attempt an extension of the Act.

10. The Board has as yet made no award in favor of anyone. It has merely said that, in connection with some pending applications for awards by persons and in amounts not disclosed in the record, if hereafter those persons are held to be appellee's employees and otherwise entitled to relief, the Board will hold that appellee is an "employer" and therefore owes them obligations under the Act.

Nevertheless, as I view the Board's powers, appellee is a "person aggrieved" within the judicial review secton of the Act (45 U. S. C. A. § 228k). For, as I believe the courts must give weight to the Board's decision interpreting the Act, I think that appellee was at once affected by the Board's decision here: Unless and until that decision is judicially set aside, appellee must, as an "employer" file reports with the Board or suffer statutory penalties;[58] if the Board's decision is incorrect, appellee, as a result of that decision while unreversed, is unjustifiably threatened with potential financial burdens. Accordingly, appellee, on my view, can maintain this suit.[59]

If, however, my colleagues' view of the Board's powers is correct, then I have difficulty in seeing a basis for this suit. For my colleagues hold that a court can give no more weight to the Board's decision than to a lawyer's opinion, and that a court can decide for itself, wholly without regard to the Board's conclusions, the status of appellee as an "employer." If that be true, then appellee after the Board's decision, as thus far made, was in precisely the same position as it had been before, so that the decision had no effect on appellee, for it was not, in legal effect, a real decision. On that assumption, (1) appellee is not a "person aggrieved," and will not be until the Board renders an award; and (2) the suit should be dismissed as prematurely brought—without any judicial decision on the merits.[60] On my colleagues' view of the Board's power, the Board's decision being a nullity, this suit must be regarded as the equivalent of one brought for a declaratory judgment before any action taken by the Board; and I think that, in the light of the judicial review section of the Act, such a suit cannot be maintained.

[58] See 45 U. S. C. A. § 228m.

[59] Columbia Broadcasting System v. United States, 316 U. S. 407; Federal Communications Commission v. National Broadcasting Company, 319 U. S. 239, Associated Industries v. Ickes, 134 F. (2d) 694 (C. C. A. 2).

[60] Cf. Gilbert v. S. E. C., F. (2d) (C. C. A. 7, December 20, 1944); In re Michigan-Ohio Building Corp., 117 F. (2d) 191 (C. C. A. 7); Okin v. S. E. C., 145 F. (2d) 206 (C. C. A. 2).

In the United States Circuit Court of Appeals for the Second Circuit

No. 138—October Term, 1944

DUQUESNE WAREHOUSE COMPANY, PLAINTIFF-APPELLEE,

vs.

RAILROAD RETIREMENT BOARD, DEFENDANT-APPELLANT,

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES, AND GEORGE M. HARRISON, PRESIDENT OF SAID BROTHERHOOD, INTERVENING DEFENDANTS-APPELLANTS.

On Appeal From the District Court of the United States for the Southern District of New York

Petition for rehearing

Your petitioner, the Railroad Retirement Board, defendant-appellant in the above-entitled cause, respectfully prays that a rehearing of this cause be granted on the following grounds:

1. That, as appears from pages 1162 to 1166 of the opinion of

the Court, the majority of the Court was under a misapprehension of, and incorrectly applied, the principles of law, as they are established by decisions of the United States Supreme Court and by decisions of this Court, concerning the proper scope of the judicial review of administrative determinations, in that the majority failed to accord weight to or consider the reasonableness of the appellant Board's construction of the statutory provision in question.

2. That the majority of the Court did not follow the well-established rule (Dobson v. Commissioner, 320 U. S. 489, Commissioner of Internal Revenue v. Scottish American Investment Co., 323 U. S. 119) that in reviewing a decision of an administrative agency courts are limited to determining whether the administrative agency's inferences and conclusions have any substantial basis in the evidence.

3. That the majority of the Court, in violation of the established law as to the limited scope of judicial review, mistakenly made findings of fact (see footnote 5 on pages 1156 to 1159 of the Court's opinion) independently of, and at variance from, the facts as found by the Board. For instance, the statement that Duquesne "is in no sense a department of Pennsylvania, but is, and always has been, conducted as a separate corporate entity, and entirely separate from and independent of Pennsylvania" (page 1166), and the statement that Duquesne "is engaged solely in the commercial warehouse business" (page 1157), constitute such independent and variant findings by the Court. On the other hand, in making its independent statement of facts, the majority of the Court overlooked significant facts which were found by the Board, such as that Duquesne's warehouses have been valuable links in the chain of Pennsylvania's railroad transportation (R. 21), and that Duquesne's operations are directly, intimately, and integrally related, functionally and economically, to Pennsylvania's railroad transportation (R. 21, 25).

4. That the majority of the Court, as appears from its statement (on page 1160 of the opinion) of the positions of the parties, was under a misapprehension as to the position of defendant-appellant Board, in that it is not, as the Court's opinion stated, the Board's position that Duquesne operates "entirely independently" of Pennsylvania; and the majority of the Court, as appears from the failure to mention certain of the Board's reasons stated in the Board's decision, was under a misapprehension as to the reasons for the Board's conclusion, such as that Duquesne's operations are primarily conducted for the purpose of assisting Pennsylvania in its attempt to increase its railroad traffic, and that a substantial part of these operations consist of storing property while it is in the course of suspended through interstate shipment.

5. That because of the misunderstandings set forth in the foregoing paragraphs, the majority of the Court was led into a mistaken view (see page 1161 of the opinion) of the meaning of the statutory phrase "in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad."

6. That even under the Court's view of the statutory provision, the Court should have reversed the Court below, since when Duquesne loads and unloads, receives and delivers, stores and otherwise handles goods under the Pennsylvania's storage-in-transit privileges, it not merely performs service "in connection with" the receipt, delivery, transfer in transit, storage, and handling of property transported, but it receives, delivers, stores, handles and transfers property which is in the course of transportation. Further, under Duquesne's contracts with Pennsylvania for handling overfreight, and damaged unclaimed freight, and delivery to the owner or Pennsylvania when the true owner is ascertained, Duquesne's services constitute services on property as to which transportation has not been completed. The majority of the Court failed to recognize those facts; as appears from the opinion, if those facts had been recognized, the majority would have reached the opposite conclusion even under its stated view (on page 1161 of the opinion) that the above-entitled statutory language is limited to "acts done only by or for the carrier while its obligations persist."

Defendant-appellant Board prays, for the reasons hereinabove set forth, that the cause be reheard.

Respectfully submitted.

RAILROAD RETIREMENT BOARD,
Petitioner.

By MYLES F. GIBBONS,
DAVID B. SCHREIBER,
LOUIS TURNER,
Counsel for Petitioner.

We hereby certify that the foregoing petition is, in our opinion, well founded in law and should be granted, and is not interposed for delay.

MYLES F. GIBBONS,
DAVID B. SCHREIBER,
LOUIS TURNER,
Counsel for Petitioner.

United States Circuit Court of Appeals for the Second Circuit

DUQUESNE WAREHOUSE COMPANY, PLAINTIFF-APPELLEE

v.

RAILROAD RETIREMENT BOARD, DEFENDANT-APPELLANT

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES, AND GEORGE M. HARRISON, PRESIDENT OF SAID BROTHERHOOD, INTERVENING DEFENDANTS-APPELLANTS

Before CHASE, HUTCHESON, and FRANK, Circuit Judges

Myles F. Gibbons, General Counsel; David B. Schreiber, Assistant General Counsel; Louis Turner, Attorney, Railroad Retirement Board, Petitioner.

PER CURIAM:

Petition for rehearing is denied.

H. B. C.
J. C. H., Jr.,
Circuit Judges.

Filed April 23, 1945.

United States Circuit Court of Appeals for the Second Circuit

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 23rd day of April, one thousand nine hundred and forty-five.

Present: Hon. HARRIE B. CHASE, Hon. JOSEPH C. HUTCHESON, Jr., Hon. JEROME N. FRANK, Circuit Judges.

DUQUESNE WAREHOUSE COMPANY, PLAINTIFF-APPELLEE

v.

RAILROAD RETIREMENT BOARD, DEFENDANT-APPELLANT

BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, ET AL., INTERVENING DEFENDANTS-APPELLANTS

A petition for a rehearing having been filed herein by counsel for the Defendant-Appellant,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

ALEXANDER M. BELL, *Clerk.*

Present: Hon. HARRIE B. CHASE, Hon. JOSEPH C. HUTCHESON, Jr., Hon. JEROME N. FRANK, Circuit Judges.

DUQUESNE WAREHOUSE CO., PLAINTIFF-APPELLEE

v.

RAILROAD RETIREMENT BOARD, DEFENDANT-APPELLANT

BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, ET AL., INTERVENING DEFENDANTS-APPELLANTS

Appeal from the District Court of the United States for the Southern District of New York.

Judgment—April 24, 1945

This cause came on to be heard on the transcript of record from District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

ALEXANDER M. BELL, *Clerk*.

[Clerk's certificate to foregoing transcript omitted in printing.]

IN UNITED STATES DISTRICT COURT

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

OPINION

DISSENTING OPINION

Judgment—April 24, 1945

[Clerk's certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

Order allowing certiorari

Filed June 11, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is consolidated with No. 1338, Duquesne Warehouse Co. vs. Railroad Retirement Board et al. for argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1945